VOLUME I

(Pages 1 to 304)

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 122

THE IVANHOE IRRIGATION DISTRICT AND THE STATE OF CALIFORNIA, APPELLANTS,

vs.

COURTNEY McCRACKEN, ET AL.

No. 123

THE MADERA IRRIGATION DISTRICT AND THE STATE OF CALIFORNIA, APPELLANTS,

vs.

CARL F. STEINER, ET AL.

No. 124

THE MADERA IRRIGATION DISTRICT, APPELLANT,

vs.

PHILLIP AND JANE E. ALBONICO.

No. 125

THE SANTA BARBARA COUNTY WATER AGENCY, APPELLANT,

vs.

MAURICE A. BALAAM, ET AL.

APPEALS FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

FILED MAY 13, 1957

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RECORD PRESS, PRINTERS, NEW YORK, N. Y., FEBRUARY 13, 1958

INDEX

No. 122

	Original	Print
Record from the Superior Court of the State of California in and for the County of Tulare, Case No. 39627	1	1
Complaint	1	1
Exhibit A—Contract between the United States and the Ivanhoe Irrigation District	14	12
Demurrer of defendant Courtney McCracken to complaint	70	43
Petition of Bureau of Reclamation, United States Department of the Interior, to be allowed to appear as amici curiae	77	45
Notice of motion to strike petition to be allowed to appear as amici curiae	85	46
Opposition of State of California to petition of Bureau of Reclamation to be allowed to appear as amici curiae	88	48
Answer of defendants, The People of the State of California, to complaint	100	50
Answer of defendant Courtney McCracken to complaint	130	65
Amended answer of defendant, The People of the State of California, and answer of the defendant Water Project Authority of the State of California to complaint	155	77
Exhibit A—Resolution adopted by the Water Project Authority, March 27, 1951	166	86
Exhibit B—Assignment, executed September 3, 1938	169	88
Exhibit C—Assignment, executed September 30, 1939	174	92
Exhibit D—Letter from Oscar L. Chapman, Secretary of the Interior to Edmund G. Brown, Attorney General of California, dated March 5, 1951	180	96
Exhibit E—Letter from Edmund G. Brown, Attorney General of California, to Oscar L. Chapman, Secretary of the Interior, dated March 22, 1951	183	98
Exhibit F—Letter from Oscar L. Chapman, Secretary of the Interior, to Edmund G. Brown, Attorney General of California, dated March 27, 1951	185	100
Answer of defendant, The State Engineer and Chief of the Division of Water Resources, Department of Public Works of the State of California, to complaint	192	102

	Original	Print
Record from the Superior Court of the State of California in and for the County of Tulare, Case No. 39627—Continued		
Findings of fact and conclusions of law	237	111
Judgment	316	175
Proceedings in the Supreme Court of the State of California, Case No. L.A. 23043	319	177
Opinion and dissenting opinions—See Appendices to the Jurisdictional Statement, page 1		
Notice of appeal by the Ivanhoe Irrigation District and the State of California	320	177

No. 123

Record from the Superior Court of the State of California in and for the County of Madera, Case No. 8502	1	182
Second amended complaint dated, October 26, 1951 (Excerpts from)	1	182
Exhibit "A"—Contract between the United States and the Madera Irrigation District dated, May 14, 1951	6	185
Exhibit "B"—Contract between the United States and the Madera Irrigation District for purchases of property and water rights dated, May 24, 1939	55	220
Answer of defendant, the people of the State of California, and answer of defendant Water Project Authority of the State of California	79	233
Exhibit "A"—Letter from Water Project Authority of the State of California to Edmund G. Brown dated, July 23, 1951, with enclosure	92	242
Exhibit "B"—Resolution adopted by Water Project Authority March 27, 1951	93	243
Exhibit "C"—Assignment executed, September 3, 1938	96	245
Exhibit "D"—Assignment executed, September 30, 1939	102	250
Exhibit "E"—Letter from Oscar L. Chapman, Secretary of the Interior to Edmund G. Brown, Attorney General of California, dated March 5, 1951	108	254
Exhibit "F"—Letter from Edmund G. Brown, Attorney General of California, to Oscar L. Chapman, Secretary of the Interior, dated March 22, 1951	111	256

	Original	Print
Record from the Superior Court of the State of California in and for the County of Madera, Case No. 8502—Continued		
Answer of defendant, the people of the State of California, and answer of defendant Water Project Authority of the State of California—Continued		
Exhibit "G"—Letter from Oscar L. Chapman, Secretary of the Interior, to Edmund G. Brown, Attorney General of California, dated March 27, 1951	113	258
Answer of Warren Ocheltree, et al. to the second amended complaint	189	260
Exhibit "I"—Assessment rolls of the Madera Irrigation District showing description of Jerold Ocheltree and Hazel O. Ocheltree's lands within Madera Irrigation District (excerpts from)	228	287
Answer of defendant, the State Engineer and Chief of the Division of Water Resources, Department of Public Works of the State of California to second amended complaint	378	288
Findings of fact and conclusions of law	423	297
Judgment	556	380
Proceedings in the Supreme Court of the State of California, Case Sac. No. 6489	614	398
Opinion and dissenting opinions—See Appendices to the Jurisdictional Statement, page 139		
Notice of appeal by the Madera Irrigation District and the State of California	614	398
No. 124		
Record from the Superior Court of the State of California in and for the County of Madera, Case No. 8497	1	403
Petition for writ of mandate filed, May 14, 1951	1	403
Alternative writ of mandate dated, May 14, 1951	11	408
Answer to petition	18	410
Findings of fact and conclusions of law	22	411
Judgment	34	418
Minutes of June 8, 1951—Demurrer	42	420
Order for correction of minutes and transcript on appeal	46	421
Proceedings in the Supreme Court of the State of California, Case Sac. No. 6460	47	422
Opinion and dissenting opinions—See Appendices to the Jurisdictional Statement, page 180		
Notice of appeal by the Madera Irrigation District	48	422

No. 125

	Original	Print
Record from the Superior Court of the State of California in and for the County of Santa Barbara, Case No. 43906	2	426
Complaint in rem to determine validity of certain contracts etc.	2	430
Exhibit "A"—Contract between the United States and the Santa Barbara Water Agency dated, September 12, 1949	73	477
Exhibit "D"—Contract between Santa Barbara County Water Agency and the City of Santa Barbara dated, September 12, 1949	130	505
Exhibit "G"—Contract between Santa Barbara County Water Agency and Montecito County Water District dated, September 12, 1949	416	537
Answer of defendants Maurice A. Balaam, Ted R. Holden, William C. Sudden, W. G. Moore, R. E. Sudden, Charles E. Sudden and L. H. Crandall	613	568
Amendment to answer of defendants Maurice A. Balaam, Ted R. Holden, William C. Sudden, W. G. Moore, R. E. Sudden, Charles E. Sudden and L. H. Crandall filed, December 7, 1950	648	592
Amendment to answer of defendants Maurice A. Balaam, Ted R. Holden, William C. Sudden, W. G. Moore, R. E. Sudden, Charles E. Sudden and L. H. Crandall filed, January 3, 1951	662	596
Findings of fact and conclusions of law	681	603
Judgment	706	620
Reporters transcript of testimony, November 14, 1951	777	626
Offers in evidence	803	644
Proceedings in the Supreme Court of the State of California, Case No. L.A. 22761	816	650
Opinion and dissenting opinions—see Appendices to the Jurisdictional Statement, page 205.		
Notice of appeal by The Santa Barbara County Water Agency	817	650
Order postponing jurisdiction	827	656

[fol. 1]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF TULARE

No. 39627

THE IVANHOE IRRIGATION DISTRICT, an irrigation district, Plaintiff,

v.

ALL PARTIES AND PERSONS HAVING OR CLAIMING TO HAVE ANY INTEREST IN THE APPROVAL AND CONFIRMATION OF THE PROCEEDINGS FOR THE ORGANIZATION OF THE IVANHOE IRRIGATION DISTRICT, AND ALL PARTIES AND PERSONS IN ANY WAY INTERESTED IN THE CERTAIN CONTRACT DATED SEPTEMBER 23, 1949, ENTITLED "CONTRACT BETWEEN THE UNITED STATES AND THE IVANHOE IRRIGATION DISTRICT PROVIDING FOR WATER SERVICE AND FOR THE CONSTRUCTION OF A DISTRIBUTION SYSTEM" MADE BY AND BETWEEN THE UNITED STATES OF AMERICA AND THE SAID IVANHOE IRRIGATION DISTRICT, THE EXECUTION OF WHICH WAS AUTHORIZED AT AN ELECTION HELD IN SAID IRRIGATION DISTRICT ON AUGUST 23, 1949, AND THE PROCEEDINGS LEADING UP TO AND INCLUDING THE EXECUTION AND DELIVERY OF SAID CONTRACT; AND ALL PARTIES AND PERSONS HAVING OR CLAIMING ANY RIGHT, TITLE OR INTEREST IN OR LIEN OR CLAIM UPON OR AGAINST THE PROPERTY WITHIN SAID DISTRICT, OR ANY THEREOF, AND ALL REAL PROPERTY WITHIN SAID DISTRICT, Defendants.

COMPLAINT—Filed October 31, 1949

Action in rem to determine the validity of the organization of the District and of the authority to make and execute contract and validity thereof. Summons issued.

[fol. 2] For its cause of action the Ivanhoe Irrigation District, plaintiff herein, alleges:

I

That it now is, and ever since January 8, 1948, has been an irrigation district duly and regularly organized and existing as such a district, under and by virtue and in full compliance with the laws of California, and ever since the time of its organization it has been continuously acting as and exercising the rights, powers, privileges and authorities of such an irrigation district, and the land within its boundaries, comprising approximately 11,117 acres, is situated wholly within the County of Tulare, in this, the State of California, and ever since the time of its organization, the offices of its Board of Directors have been continuously located and maintained, and now are located and maintained at the Town of Ivanhoe, in this County and State.

II

Plaintiff district brings this action for the judicial determination of the validity of a certain contract made and executed on September 23, 1949, by and between the plaintiff District and the United States of America, providing for the delivery of a water supply from Central Valley Project and the Friant-Kern Canal to the District, by the United States of America and also for the design and construction of a distribution system for the District, by the United States of America Department of the Interior, Bureau of Reclamation, and setting forth the rights, duties and obligations of the respective parties with respect thereto, and the defendants herein are all parties and persons having, or claiming to have any interest in the judicial examination, approval and confirmation of:

[fol. 3] (1) All the proceedings had and taken for the organization of the plaintiff District, as an irrigation district; and

(2) All the proceedings leading up to and including the execution and delivery of the above mentioned contract; and

(3) The validity of the contract and of each and every term and provision thereof; and

(4) The right and authority of the respective persons signing the same and the parties thereto to so execute the contract; and said contract is in words and figures, the same as the copy thereof, hereto attached, marked "Exhibit 'A'" referred to and by such reference, incorporated herein for all purposes, the same as if herein fully set out, and as appears thereon, the contract was executed for and on the behalf of plaintiff District, by A. S. McKellar and Russell Davis, the President and Secretary, respectively, of its Board of Directors, in its name and under its seal, and for and on the behalf of the United States of America, by Richard L. Boke, the Regional Director for Region 2, of the Bureau of Reclamation of the United States Department of the Interior, and each of the persons so executing the contract on the behalf of the respective parties, acted in their respective official capacities as stated thereon, and within the scope and not beyond their respective authorities.

III

For a long time, to wit: for more than one year prior to the execution and delivery of said contract on September 23, 1949, the Bureau of Reclamation of the Department of the Interior of the United States of America, and the plaintiff District, had been negotiating a contract which would assure the District plaintiff of a dependable supply [fol. 4] of water and the design and construction of a distribution system, during which negotiations, several forms of contract were proposed and studied by the respective parties and subsequently and as a result of such negotiations and studies and on May 24, 1949, the final form of said contract, then identified by the mark: "Sacramento Office Draft, 3-8-49 Rev. W.O. 4-27-49," was proposed to and accepted by the plaintiff District, which acceptance was by the resolution of its Board of Directors regularly passed and adopted at the adjourned regular meeting of said Board, held on May 24, 1949, and by which resolution, the contract as proposed was accepted by the District and the submission of the same to the Districts Securities Commis-

sion of the State of California, for its examination, report and approval, as required by law, was authorized and directed and the said resolution was and is in words and figures the same as the certified copy thereof, hereto attached, marked Exhibit "B" referred to and by such reference, incorporated herein, for all purposes, the same as if here fully set out, and the form of contract therein mentioned or referred to is the same as is hereinabove referred to and hereto attached as "Exhibit "A".

IV

Thereafter, and pursuant to the above mentioned resolution of May 24, 1949, as passed and adopted by the Board of Directors of plaintiff District, the above mentioned contract was duly and regularly submitted to the Districts Securities Commission of the State of California, for its examination, report and approval and thereafter and on July 7, 1949, and by the report, order and decision of said Commission, regularly made at San Francisco, the said Contract was approved by it, which report, order and decision is in words and figures the same as the copy thereof, [fol. 5] hereto attached, marked "Exhibit "C" referred to and by such reference, incorporated herein for all purposes the same as if fully set out.

V

Thereafter and pursuant to the above mentioned resolution of May 24, 1949, copy of which being the above mentioned "Exhibit B," and in pursuance of the further resolution of the Board of Directors of the plaintiff District, duly passed and adopted at the regular meeting of said Board, held on July 19, 1949, a special election was regularly called to be held in said district on August 23, 1949, for the purpose of submitting to the qualified electors of plaintiff, the following proposition, to wit:

"PROPOSITION:—Shall the Ivanhoe Irrigation District enter into the proposed contract with the United States of America, approved by the Secretary of the Interior on April 27, 1949, and identified by the mark, "Sacramento Office Draft, 3-8-49, Rev. W.O. 4-27-49," which

contract was accepted by the District by the resolution and action of its Board of Directors adopted and taken on May 24, 1949, and thereafter, by its Order No. 1, approved by the California Districts Securities Commission, on July 7, 1949?

The proposed contract, copy of which is on file in the office of the District and shall remain on file and be available at all times during business hours for the inspection of any interested person which the privilege of making copy, and to which reference is made for further particulars, provides for a supply of water from Friant-Kern Canal and for the design and construction of a distribution system for the District.

With reference to the water supply, and in general [fol. 6] outline, the contract provides for the water supply for a term of forty years, and of that term, the first five years are made a trial period, during which period the quantities of water to be delivered and paid for are not fixed, but are determined by need and conditions, and thereafter, during the remaining term of the contract, and unless the commitment be modified by mutual consent, the United States of America is obligated to deliver and the District required to accept and pay for 7700 acre feet of Class 1 water, and to the extent the same is available and subject to the limitations and conditions expressed in the contract, Class 2 water not to exceed 7900 acre feet, per year, at the maximum rate of $3.50 per acre foot for Class 1 water and $1.50 per acre foot for Class 2 water, payable in advance, and the annual payment required of the District, exclusive of penalties and interest for such water, cannot exceed $38,700.00, and the times, terms and conditions under which the water is to be delivered and for which payment is to be made by the District and the rights and obligations of each party to the contract are fully set forth in the contract.

With reference to the design and construction of the distribution system and in general outline, the contract provides for the design and construction of a distribution system providing for delivery of water to each

unit of a total of approximately 10,000 acres of irrigable land in the district at a cost not to exceed $1,589,807.00, which money will be advanced by the United States of America, and the actual cost repaid by the [fol. 7] District, without interest, in forty successive equal annual installments, commencing in the year following the second year after the distribution system is so far completed as to be available for use. Provision is also made whereby the District is obligated to pay certain operation and maintenance costs to the United States, and also certain costs of administration, supervision, inspection and for repairs of and to the distribution system incurred by the United States. Provision is also made whereby the operation of the distribution system, when a certain stage or stages of completion is attained, will be turned over to the District. During the period of repayment, the annual payment to the United States, required of the District, exclusive of penalties and interest, for or in connection with said distribution system, will not exceed $39,745.00, for repayment, and an additional annual payment estimated to be not in excess of $2,500.00 on account of the operation and maintenance, inspection, supervision, administration and repairs above mentioned, and the times, terms and conditions under which the distribution system is to be designed, constructed, operated, maintained and turned over to the District and payments thereon, or on account thereof made are fully set forth in the contract.

The contract also contains provisions whereby the District in certain circumstances, shall convey certain rights-of-way, if any, not included in the distribution [fol. 8] system cost, to the United States, where necessary in connection with the distribution system.

The proposed contract is made under and pursuant generally to the Act of Congress of June 17, 1902 (32 Stats. 388) and acts amendatory thereof and supplemental thereto, as authorized by the laws of California, and its terms are in general such as comply with and conform to the provisions of the law."

and said special election was duly called, noticed and held and it was legally and fairly conducted, all in the manner provided by law, and thereafter, and upon the canvass of the votes cast at said election it was found and determined that at said election a total of 251 votes were cast by qualified electors of which total 218 votes were cast in favor of and 33 votes were cast against the proposition submitted thereat, and said election being so legally called, noticed and held, and fairly conducted, all in the manner provided by law, the execution of the above mentioned contract with the United States of America, was thereby duly authorized by the qualified electors of plaintiff District, as provided by law.

VI

Subsequently, and in pursuance of the above mentioned resolution of May 24, 1949, copy of which being hereto attached and marked "Exhibit B" and in further pursuance of the resolution of the Board of Directors of plaintiff District, which was regularly passed and adopted at the regular meeting of the Board, held on August 29, 1949, a copy of which resolution being attached to the above mentioned Exhibit "A" as a part thereof, and on September 23, 1949, the above mentioned contract with the United [fol. 9] States of America, which is the contract in words and figures the same as Exhibit "A", hereto attached, and now and since further identified by the additional number and mark, "I—75 r. 1809, was regularly executed by the parties thereto by the persons whose signatures are thereunto subscribed by, for and on behalf of the respective parties, as aforesaid.

VII

The lands within plaintiff District, are situated entirely within this, the County of Tulare, and the gross area within its boundaries comprises 11,117 acres approximately, of which acreage approximately 9,968 acres are irrigable, of which irrigable acreage approximately 8,865 acres are presently irrigated and the remainder of the irrigable acreage is capable of, and if water were available, would, according to the information and belief of plaintiff, be developed into irrigated land for the production of crops

of great value, and to the immediate benefit of the district and the inhabitants and tax payers thereof and to the promotion of the welfare and best interests of the State and of the United States.

At the present time, the rural population of the District comprises approximately 1,000 persons and with the development of the irrigable, but presently unirrigated acreage, it is estimated by the plaintiff District that the rural population of the District will be increased to 1,150 persons approximately.

The rainfall beneficially available for the production of crops within the plaintiff District, normally amounts, according to the calculated estimation of qualified persons and the information and belief of plaintiff District, to 0.48 [fol. 10] acre feet per year, and with the exception of the rainfall and a small and here insignificant amount of water derived from Wutchumna Ditch, all of the water presently available for the irrigation of land within the District is derived from the underground by means of wells and pumps operated by the land owners or occupiers or water users within the District, and the total amount of water required for the irrigation of the lands within the District which are presently irrigated, is 23,667 acre feet (2.67 acre feet per acre) approximately per year on the average and under conditions of full development of the irrigable acreage within the District, it is the information and belief of plaintiff District that the amount required will be increased to 26,987 acre feet (2.71 acre feet per acre) per year, on the average.

The lands within plaintiff District are situated and overlie a geological formation or subsurface structure from which all of the water presently pumped for the irrigation of lands within the plaintiff District is derived, and as a result of the lifting of water from said underground by pumps, more water is removed therefrom than is by nature restored in each year, and the aggregate amount of such accumulated over-draft, since 1922, is more than 39,600 acre feet, and the amount of such over-draft is steadily and continuously increasing.

It is therefore, necessary that a supplemental supply of water be obtained in order to preserve the life of the Dis-

trict and to make the development of the lands within its boundaries possible and the only source from which such necessary water can be had is through the United States of America, from Central Valley Project, and the above mentioned contract with the United States of America, of which approval is herein sought, provides [fol. 11] for, among other things, the furnishing of such additional and supplemental water to plaintiff District.

VIII

As will likewise appear by its terms, the contract also provides for the design and construction of a distribution system for the plaintiff District, and all of the rights and obligations of the parties to the contract are therein set forth in the words and figures which are the same as Exhibit "A" hereto attached.

IX

Plaintiff district is located within the area commonly called the "Central Valley" in this State, which area is an arid one, and in which the natural supply of water is not adequate for the maintenance of its present development and productivity. The District and the whole of the "Central Valley" is fertile and has produced and is producing food and agricultural products of great value and importance to the welfare of the District, the area, the State of California and of the United States of America, and, with the growth of the population of the area and of the State and of the United States of America, it has become and will continue to be of increasingly greater importance and significance to the welfare of the District and of the State of California and of the United States of America, as an area from which essential food and other agricultural products necessary to the maintenance of their health and welfare may be produced.

Upon considerations such as these, the people of the State of California and of the United States of America, each as sovereigns and in the exercise of their respective [fol. 12] sovereign powers, have each by law made provision for the supply of water necessary to the maintenance

and growth of the Central Valley area, of which plaintiff District is a part, and the above mentioned contract is made pursuant to and in compliance with the laws of the State of California, and of the United States of America, so made in the pursuit of their common welfare.

X

That in each and every act or proceeding of the Board of Directors of the plaintiff District hereinabove mentioned, and in each and every official act or proceeding of its Board of Directors connected with or leading up to the making, execution and delivery of the contract, the same were, in each and every case, done or performed by that Board at meetings regularly called and held at the usual place for the holding of such meetings, to wit: at the offices of said Board located in the Town of Ivanhoe, in this County and State, and at each and every such meeting, a quorum, to wit: a majority or more of the members were present and participating and voted in favor of the action taken, and in all things connected with the making, execution and delivery of said contract, the plaintiff District and its officers, directors and agents acted in good faith and in the pursuance of that which was, in each instance, by them deemed to be, and is still deemed to be, to and for the best interests and advantage of the District and the inhabitants thereof, and the land owners, assessment payers, water users and all other persons interested therein, and in all things connected with the making and execution of the contract, the respective parties thereto and the persons who executed the same by and for and on the behalf of the respective parties, acted only within [fol. 13] and not beyond the powers and authorities in them by law vested and within the time and upon the notice or notices duly given, in the manner and form required or provided by law, and not otherwise, and all acts and things and conditions required by law precedent to the execution and delivery of the contract and its authorization, to be done, performed, happen or exist, were done, performed, did happen and did exist all in due time and in the form and manner required by law, and the contract

above mentioned, and as the same is executed is in all respects, the legally valid act of the parties thereto and binding upon, in favor of and against the Ivanhoe Irrigation District and the United States of America, and this action is commenced in pursuance of the resolution of the Board of Directors of the Plaintiff District as passed and adopted on September 7, 1949, certified copy of which being hereto attached, referred to and by such reference, incorporated herein.

Wherefore, plaintiff prays judgment:

1. That an order be made directing the Summons as issued herein, be served by publication in a newspaper to be designated by the Court, for such time and in such manner as may be required by law; and

2. That this Court examine and inquire into all of the acts and proceedings had and taken for the organization of the plaintiff District and all of the acts or proceedings had or taken in connection with and leading up to and including the execution and delivery of the above mentioned contract and also examine and inquire into the validity of the contract and of every term and provision thereof, and of the right and authority of the respective parties thereto to execute the same and also of the right and authority of the respective persons who signed or exe- [fol. 14] cuted the same, for and on the behalf of the respective parties thereto; and

3. That upon such examination and inquiry and upon the proofs to be adduced, this Court make and enter its judgment and decree herein approving and confirming the proceedings had for the organization of plaintiff as an irrigation district and determining that it was and is duly and legally organized and exists as such an irrigation district and likewise approving and confirming all of the steps and all of the acts and proceedings had or taken and leading up to and including the execution and delivery of the above mentioned contract and determining that the same and all and each and every one of the terms and provisions thereof, are legally valid and binding upon, against and in favor of the parties thereto and, that such other and

further orders and decrees may be made as to the Court shall seem just, wise or necessary in the premises.

E. I. Feemster, and Jas. R. McBride, by Jas. R. McBride, Attorneys for Plaintiff, Ivanhoe Irrigation District.

EXHIBIT A TO COMPLAINT

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Contract Symbol & Number
175r-1809

Central Valley Project, California

[fol. 15] CONTRACT BETWEEN THE UNITED STATES AND THE IVANHOE IRRIGATION DISTRICT PROVIDING FOR WATER SERVICE AND FOR THE CONSTRUCTION OF A DISTRIBUTION SYSTEM

ARTICLE	TITLE
1	Preamble
2–8	Explanatory Recitals
9	Definitions
Part A	
10	Term of Part A of Contract
11	Water to be Furnished to District
12	Time for Delivery of Water
13	Rate and Method of Payment for Water
14	Adjustments
15	Point of Delivery, Measurement and Responsibility for Distribution of Water
16	United States not Liable for Water Shortage
17	Use of Water Furnished to District

Part B

18 Construction of Works and Limit of Expenditures Therefor
19 Payment by District
20 Development Period
21 Estimated Cost of Operation and Maintenance to be Paid in Advance
22 Transfer of Operation and Maintenance to
[fol. 16] District—United States to be Held Harmless
23 District to Pay Certain Miscellaneous Costs Relating to Transferred Works
24 Computation of Costs

End of Part B

25 Agreed Charges a General Obligation of the District
26 All Benefits Conditioned upon Payment
27 Levy of Taxes and Assessments—Fixing of Rates and Tolls
28 Refusal of Water in Case of Default
29 Penalty upon Delinquency in Payment
30 District to Keep Books and Records and Report Crop and Other Data
31 Inspection of Books and Records
32 Changes in Organization of District
33 Title to Remain in the United States
34 Land not to Receive Service from Distribution System or Water Furnished to District by United States until Owners thereof Execute Certain Contracts
35 Valuation and Sale of Excess Lands
36 Excess Lands
37 Amendment of Federal Reclamation Laws
38 Contingent upon Appropriations or Allotments of Funds
[fol. 17] 39 Officials not to Benefit
40 Notices
41 Assignment Prohibited: Successors and Assigns Obligated: Default

42 Assurance Relating to Validity of Contract
43 Performance of Work with Contributed Funds

Sacramento Office Draft
3-8-49
Rev. W. O. 4-27-49

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Contract Symbol & Number
175r-1809

Central Valley Project, California

CONTRACT BETWEEN THE UNITED STATES AND THE IVANHOE IRRIGATION DISTRICT PROVIDING FOR WATER SERVICE AND FOR THE CONSTRUCTION OF A DISTRIBUTION SYSTEM

1. This CONTRACT, made this 23rd day of September, 1949, in pursuance generally of the Act of Congress of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all collectively herein styled the Federal reclamation laws, between THE UNITED STATES OF AMERICA, herein styled the United States, represented by the Secretary of the Interior, and the IVANHOE IRRIGATION DISTRICT, a political subdivision of the State of California, duly organized, existing and acting pursuant to the laws [fol. 18] thereof, with its principal place of business in the City of Ivanhoe, State of California, herein styled the District,

WITNESSETH, THAT:

EXPLANATORY RECITALS

2. WHEREAS, the United States is constructing the Central Valley Project for diversion, storage, carriage, distri-

bution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, generation and distribution of electric energy, salinity control, navigation and other purposes, of waters of the Sacramento River and San Joaquin River and their tributaries; and

3. WHEREAS, the United States proposes to construct and operate the Friant-Kern Canal, which will be used, in part, for the furnishing of water to the District pursuant to the terms of this contract; and

4. WHEREAS, the District desires to contract, pursuant to the Federal reclamation laws and the laws of the State of California, for the furnishing by the United States of a supplemental water supply from the Project for which the District will make payment to the United States upon the basis, at the rates, and pursuant to the conditions hereinafter set forth; and

5. WHEREAS, investigations of the District lands and present water supply indicate that irrigated and irrigable lands within the boundaries of the District are at present in need of additional water for irrigation and certain areas have a potential need of water for irrigation, and that ground water underlying the District is seriously depleted and in need of replenishment and that an additional water supply to meet these present and potential needs can be made available by and through the works constructed and to be con-[fol. 19] structed by the United States; and

6. WHEREAS, investigations of the stream flow in the Sacramento River and the San Joaquin River and their tributaries indicate that there will be available for furnishing to the District from the Friant-Kern Canal an additional water supply for surface diversion and direct application for irrigation, and directly or indirectly to replenish depleted ground waters underlying the District; and

7. WHEREAS, the District, in order to utilize the water supply made available from the Central Valley Project under Part A of this contract and such future contracts as may be made between the United States and the District, desires that a general distribution and lateral system

be constructed for the District by the United States acting by and through the Bureau of Reclamation, United States Department of the Interior, pursuant to the Federal reclamation laws; and

8. WHEREAS, the United States is willing to undertake the construction of the aforementioned distribution system under the conditions hereafter set forth;

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed by the parties hereto as follows:

DEFINITIONS

9. When used herein, unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the term:

(a) "Secretary" or "contracting officer" shall mean the Secretary of the United States Department of the Interior or his duly authorized representative;

[fol. 20] (b) "Project" shall mean the Central Valley Project, California, of the Bureau of Reclamation;

(c) "initial delivery date" shall mean the date announced by the Secretary on which water first will be available for furnishing to the District by means of the Friant-Kern Canal pursuant to Part A of this contract;

(d) "year" shall mean the period from and including March 1 of each calendar year through the last day of February of the following calendar year;

(e) "calendar year" shall mean the period from January 1 through December 31, both dates inclusive;

(f) "Part A" shall mean Articles 10 through 17;

(g) "Part B" shall mean Articles 18 through 24;

(h) "contract" shall mean Articles 1 through 43;

(i) "Class 1 water" shall mean that supply of water at Friant Dam and Reservoir which, subject to the

contingencies described in Article 16 hereof, will be available for delivery from the Friant-Kern and Madera Canals and the San Joaquin River as a dependable water supply during each irrigation season;

(j) "Class 2 water" shall mean that supply of water which becomes available in addition to the supply of Class 1 water and which, because of its uncertainty as to availability and time of occurrence, will be undependable in character and will be furnished only if, as, and when said water is available as determined by the United States.

Part A

TERM OF PART A OF CONTRACT

[fol. 21] 10. The term of Part A shall extend for a period of forty (40) years, including the year in which the initial delivery date occurs.

WATER TO BE FURNISHED TO DISTRICT

11. (a) After the initial delivery date and until March 1 of the year following the completion of the distribution system as announced by the contracting officer as prescribed in Article 18 (b), or for a period of five years after March 1 of the year following that in which the initial delivery date occurs, whichever is the longer period, the United States will furnish to the District and the District each year will accept and pay, as provided in Article 13, for Class 1 and Class 2 water from the Friant-Kern Canal in the quantities specified in a schedule submitted by the District in accordance with Article 12 (a) for such year: *Provided,* That no Class 1 water shall be furnished to the District and the District shall not be obligated to accept and pay for Class 1 water until the date, announced by the contracting officer, that the facilities necessary for furnishing Class 1 water have been completed, and after said date no more than 51 percent of the total quantity of water called for by the District during any such year in the aforesaid schedule shall be Class 2 water, nor shall the United States be obligated to furnish more than 7,700 acre-feet of Class 1 water during any such year.

(b) In the year commencing on March 1 of the year following the completion of the distribution system as announced by the contracting officer as provided in Article 18 (b), or the sixth year from March 1 of the year in which the initial delivery date occurs, whichever is the later, and each year thereafter during the remainder of the term of Part A, the United States shall furnish to the District and the District shall accept and pay for, as pro-
[fol. 22] vided in Article 13 (a) hereof, 7,700 acre-feet of Class 1 water: *Provided,* That the parties hereto may, by mutual agreement at any time or times after the initial delivery date, increase or decrease the amount of Class 1 water required thereafter to be furnished each year to the District by the United States during the remainder of the term of Part A.

(c) In addition to the quantity of Class 1 water set forth in subdivision (b) of this article, the United States shall furnish to the District and the District shall accept and pay for Class 2 water, to the extent that it is available as determined by the contracting officer, each year during the portion of the term of Part A of this contract remaining after written notice has been furnished by the District to the United States of the District's desire to receive such Class 2 water pursuant to this subdivision: *Provided,* That in no event shall the District be obligated or entitled to receive more than 7,900 acre-feet of Class 2 water during each such year: *Provided further,* That, upon the furnishing of any such notice or notices by the District to the United States, the District each year thereafter shall be obligated to accept and pay for and the United States shall be obligated to furnish the quantity of Class 2 water specified in the notice, to the extent that it is available therefor as determined by the contracting officer, unless such quantity is reduced by written agreement of the parties. Such notice or notices may be furnished by the District until 7,900 Acre-feet of Class 2 water is required to be furnished to and accepted and paid for by the District each year. No such notice shall be valid or effective unless it is received by the United States on or before November 1 preceding
[fol. 23] the year in which such notice is to become effective

and in no event shall any such notice be valid or effective if received by the United States later than March 1 of the fifteenth year after the year in which the initial delivery date occurs. The District shall not be obligated to accept more than 1,500 acre-feet of Class 2 water during any period of thirty (30) consecutive calendar days.

TIME FOR DELIVERY OF WATER

12. (a) The District shall submit in writing to the contracting officer on or before March 1 of each year a schedule, subject to the provisions of Article 11 hereof and satisfactory to the contracting officer, indicating the desired times and quantities for the delivery of all Class 1 and Class 2 water pursuant to this contract during such year and the United States shall, within the provisions hereof, attempt to deliver said water in accordance with said schedule, or any revision thereof satisfactory to the contracting officer submitted by the District within a reasonable time before the desired change of the time for delivery, as nearly as may be feasible as conclusively determined by the contracting officer.

(b) The District may, with the written consent of the contracting officer, in any year exchange water with any other District which has contracted with the United States for water from the Project. No sale or other disposal by the District for use outside the District of any water, or the right to the use thereof, furnished to the District pursuant to this contract shall be valid without the contracting officer's written consent thereto.

RATE AND METHOD OF PAYMENT FOR WATER

[fol. 24] 13. (a) The contracting officer will, on or before February 15 of each calendar year, by written notice, notify the District of the rates of payment to be made by the District for all water to be delivered to it pursuant to this contract during the ensuing year, but in no event shall the rates so announced be in excess of $3.50 per acre-foot for Class 1 water and $1.50 per acre-foot for Class 2 water.

(b) The District shall, each year during the period described in Article 11 (a) hereof, in advance of the delivery of any water for said year make payments for all Class 1 and Class 2 water requested by the District in the schedule submitted as aforesaid at the rates fixed in the manner provided in (a) of this article.

(c) During the period described in Article 11 (b), the District shall, each year in advance of the delivery of water for said year, make payment to the United States, at rates fixed as provided in (a) of this article for all Class 1 and Class 2 water which the District is required to receive pursuant to the provisions of said Article 11 (b). Such payments by the District shall be made on or before March 1 or such other date, prior to the time for commencement of delivery of such water, of the respective year as may be specified by the contracting officer in written notice to the District.

(d) In the event the District fails or refuses to accept delivery of the quantities of water available for delivery to and required to be accepted by it pursuant to this contract, or in the event the District in any year, during the period described in Article 11 (b) hereof, fails to submit a schedule for delivery as provided in Article 12 (a) of this contract, said failure or refusal shall not relieve the District of [fol. 25] its obligation to pay for said water and the District agrees to make payment therefor in the same manner as if said water had been delivered to and accepted by it in accordance with this contract.

(e) Water furnished to the District during any month designated in the schedule submitted by it pursuant to Article 12, for the furnishing of water to the District, shall be deemed to have been accepted as Class 1 water to the extent that Class 1 water is called for in said schedule for said month and all water furnished to the District in excess of the amount of Class 1 water called for in said schedule for said month shall be deemed to have been accepted as Class 2 water. Water available for furnishing to the District in accordance with the approved schedule and not accepted by the District shall be deemed to have been ac-

cepted by the District in accordance with the aforesaid schedule.

ADJUSTMENTS

14. The amount of any overpayment by the District by reason of the quantity of water actually available for the District during any year, as conclusively determined by the contracting officer, having been less than the quantity of such water which the District otherwise under the provisions of this contract would have been required to receive and pay for, shall be applied first to any accrued indebtedness arising out of Part A then due and owing to the United States by the District and any amount of such over-payment then remaining shall, at the option of the District, be refunded to the District or credited upon amounts to become due to the United States from the District under the provisions of Part A in the ensuing year.

POINT OF DELIVERY, MEASUREMENT AND
[fol. 26] RESPONSIBILITY FOR DISTRIBUTION OF WATER

15. (a) The water to be furnished to the District pursuant to this contract will be delivered at Friant-Kern Canal at such points as may be mutually agreed upon in writing by the contracting officer and the District: *Provided,* however, That in the event that the United States shall have reached the construction of the portion of the Friant-Kern Canal, which probably will embrace such points, and the location has not been so agreed upon such points shall be established at locations as, in the conclusive determination of the contracting officer will best serve the needs of the District.

(b) All water delivered pursuant to this contract shall be measured by the United States at each point of delivery established pursuant to (a) of this article and with equipment installed, operated, and maintained by the United States. Upon the request of the District, the accuracy of such measurements will be investigated by the contracting officer and any errors appearing therein adjusted.

(c) The United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution

of water which may be furnished to the District hereunder, outside the facilities then being operated and maintained by the United States, nor for claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal or distribution of such water outside of such facilities: *Provided,* That the United States reserves the right to all waste, seepage, and return flow water derived from water furnished to the District hereunder and which escapes or is discharged [fol. 27] beyond the District's boundaries and nothing herein shall be construed as an abandonment or a relinquishment by the United States of any such water, but this shall not be construed as claiming for the United States any right, as waste, seepage, or return flow, to water being used pursuant to this contract for surface irrigation or underground storage within the District's boundaries by the District or those claiming by, through, or under the District.

(d) Notwithstanding any provision of this contract to the contrary, the United States shall not be obligated to furnish either Class 1 or Class 2 water to the District pursuant to Part A unless and until the construction by the United States of facilities to the extent required for furnishing of the respective class of water to the District has been completed as conclusively determined by the contracting officer.

(e) The United States may temporarily discontinue or reduce the amount of water to be furnished to the District as herein provided for the purposes of such investigation, inspection, maintenance, repair, or replacement as may be necessary of any of the Project facilities necessary for the furnishing of water to the District or any part thereof but so far as feasible the United States will give the District due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need by given. In the event of any such discontinuance or reduction, the United States will, upon the resumption of service, attempt to approximate the quantity of water which would have been furnished to the District in the absence of such contingency.

UNITED STATES NOT LIABLE FOR WATER SHORTAGE

16. (a) There may occur at times a shortage during any [fol. 28] year in the quantity of water available for furnishing to the District by the United States pursuant to this contract through and by means of the Project and in no event shall any liability accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising from a shortage on account of errors in operation, drought or unavoidable causes. In no event shall the United States (A) deliver from Friant Dam in any year any Class 2 water pursuant to this or any other contract heretofore or hereafter entered into involving the same Project water supply, until the contracting officer shall have determined that the quantity of Class 1 water required to be delivered to the District from Friant Dam hereunder and to others under any such other contract will be available for delivery in said year, nor (B) execute contracts which, together with this contract, shall in the aggregate provide for furnishing during the life of this contract Class 1 water from Friant Dam in excess of 800,000 acre-feet per year. In any year in which there may occur a shortage from any cause, the United States reserves the right to apportion the available water supply among the District and others entitled, under existing and future contracts, to receive Class 1 water from Friant Dam in accordance with conclusive determination of the contracting officer as follows:

(i) A determination shall be made of the total quantity of Class 1 water agreed to be accepted during the respective year under all contracts then in force for the delivery of Class 1 water through Friant-Kern and Madera Canals and the San Joaquin River from Friant Dam, the amount so determined being herein referred to as the Class 1 contractual commitments.

[fol. 29] (ii) A determination shall be made of the total quantity of Class 1 water at Friant Dam which is available for meeting Class 1 contractual commitments, the amount so determined being herein referred to as the available supply.

(iii) The total quantity of Class 1 water agreed to be accepted by the District during the respective year, under Article 11 hereof, shall be divided by the Class 1 contractual commitments, the quotient thus obtained being herein referred to as the District's contractual entitlement.

(iv) The available supply shall be multiplied by the District's contractual entitlement and the result shall be the quantity of water required to be delivered by the United States to the District for the respective year, but in no event shall such amount exceed the total quantity of Class 1 water agreed to be accepted by the District pursuant to Article 11 hereof.

In so far as determined by the contracting officer to be practicable, the United States will, in the event a shortage appears probable, notify the District of such determinations in advance of irrigation season.

(b) If there only is available, as determined by the contracting officer, for furnishing to the District pursuant to this contract less than the quantity of Class 2 water which the District otherwise would be entitled to receive pursuant to subdivision (a) or (c) of Article 11 hereof, the quantity of Class 2 water which shall be furnished to the District by the United States will be determined in the manner set forth in paragraphs (i), (ii), (iii), and (iv) of subdivision (a) of this article for apportioning Class 1 water in the event of a shortage.

[fol. 30] (c) In the event that in any year there is delivered to the District, by reason of any shortage or apportionment, as provided in subdivision (a) or (b) of this article, or any discontinuance or reduction of service as set forth in Article 15 (e) hereof, less than the quantity of water which the District otherwise would be entitled to receive hereunder, there shall be made an adjustment on account of the amounts paid to the United States by the District for Class 1 and Class 2 water for said year, in a manner similar to that provided for in Article 14 hereof. To the extent of such deficiency, such adjustment shall constitute the sole remedy of the District or any one having

or claiming to have by, through, or under the District, the right to the use of any of the water supply provided for herein. The United States does not guarantee the sale and delivery of any Class 2 water and such Class 2 water will be furnished and delivered to the District only if, as, and when said water is available for delivery to the District as conclusively determined by the contracting officer.

(d) The rights of the District under Part A of this contract are subject to the terms of the Contract for Exchange of Waters dated July 27, 1939, between the United States and the San Joaquin and Kings River Canal and Irrigation Company, Incorporated, and others, and recorded on the 18th day of September 1939, in the office of the County Recorder of

(i) Fresno County in Book 1810 of Official Records at Page 50;

(ii) Stanislaus County in Book 704 of Official Records at Page 1;

(iii) Merced County in Book 623 of Official Records at Page 417;

(iv) Madera County in Book 247 of Official Records at Page 113.

USE OF WATER FURNISHED TO DISTRICT

17. The District agrees that water furnished to it by [fol. 31] the United States pursuant to Part A will not be delivered or furnished by the District for any purpose other than agricultural purposes, including but not restricted to the watering of stock, or underground water replenishment without the written consent of the contracting officer.

Part B

CONSTRUCTION OF WORKS AND LIMIT OF EXPENDITURES THEREFOR

18. (a) To the extent that funds may now or hereafter be available by appropriation the United States will expend toward construction of a general distribution and lateral

system, surface drainage works, and other related distribution and surface drainage works, all collectively comprising and herein styled the distribution system, a sum not in excess of one million five hundred and eighty-nine thousand eight hundred and seven dollars ($1,589,807), or so much thereof as the contracting officer deems necessary for the completion of the distribution system. Said distribution system will not include the Friant-Kern Canal, the Friant-Kern Canal right-of-way, nor any facilities or structures located thereon. The distribution system will be constructed so as to provide facilities for the delivery of water from the Friant-Kern Canal to each unit of a total of approximately 10,000 acres of irrigable land, or such lesser area as may be agreed upon in writing by the contracting officer and the District, each unit for which said facility is to be provided to be as mutually agreed upon by the District and the contracting officer but in no event to comprise more than 160 acres of such land. The general area to be served, and the general type and layout of the distribution system shall be subject to the review and approval of the District, evi-[fol. 32] denced by a resolution of the District Board of Directors, prior to the commencement of construction of the distribution system.

(b) When the contracting officer notifies the District, in writing, that total expenditures have been made to the limit determined as provided in (a) of this article or so much thereof as the contracting officer considers necessary and useful for the construction of the distribution system as described in (a) of this article, the distribution system shall be deemed to have been completed within the meaning of this contract.

PAYMENT BY DISTRICT

19. (a) The District will repay to the United States the actual cost, but in no event in excess of one million five hundred and eighty-nine thousand eight hundred and seven dollars ($1,589,807) incurred by the United States, in providing the distribution system. The obligation defined in this subsection shall be referred to hereinafter as the construction obligation.

(b) The United States will invoke all legal and valid reservations of rights-of-way under acts of Congress, or otherwise reserved or held by it without cost to the District, except that the United States reserves the right where rights-of-way are thus acquired to reimburse the owner of the servient lands for the value of improvements which may be destroyed and the District agrees that the United States may include such disbursements in the cost of the distribution system to be repaid by the District. The District agrees to convey to the United States, on the request of the contracting officer, without cost, the unencumbered fee simple title to any and all lands owned by it or perpetual easements therein required for right-of-way purposes for the distribution system. Where rights-of-way are required [fol. 33] for works herein agreed to be constructed by the United States, and such rights-of-way are not reserved to the United States under acts of Congress or otherwise, and the lands over which such rights-of-way are required are not then owned by the District, then the District agrees that it will, upon request of the United States, acquire such lands, or perpetual easements therein, using in connection therewith such forms of contracts, deeds and other necessary papers as may be required by the United States, and purchases shall be only at prices that are satisfactory to the Secretary. Title shall be taken in the name of the United States, and on procuring execution of the necessary contracts, deeds and other papers, they shall be transmitted by the District to the United States by whom payment will be made, after title has been found satisfactory to the United States. Expenses incurred by the District in connection with acquisition above provided for shall, to the extent approved by the contracting officer, be paid to the District on the basis of annual statements submitted at the close of each calendar year, and shall be chargeable as part of the construction costs.

(c) The construction obligation shall be paid by the District in forty (40) successive, equal, annual installments the first of which shall become due in the year following the last year of the development period described in Article 20 hereof. Such installments shall be payable one-half thereof

on February 1 and one-half thereof on August 1. If the actual construction cost shall not have been determined by the Secretary when the first construction obligation installment shall have become due hereunder, he shall announce the estimated construction cost. Such estimated construction cost shall govern the amount of the construc-
[fol. 34] tion obligation installments herein referred to until such time as the actual construction obligation can be determined and a statement thereof furnished to the District. When notice of the actual construction obligation has been given to the District, installments coming due thereafter from the District shall be adjusted to reflect any difference between the estimated cost and the actual cost of the distribution system.

(d). The contracting officer may, at any time in his discretion, upon request of the District, evidenced by a certified copy of a resolution of the Board of Directors of the District, provide for dates upon which annual payments by the District of the District's construction obligation shall become due and payable other than and in lieu of those dates fixed for the payment of such annual installments as provided in (c) of this article.

DEVELOPMENT PERIOD

20. A development period for the lands in the District is hereby fixed at two (2) years from and including the first year in which the distribution system is so far completed as to be available for use, and water is available for furnishing to the District pursuant to Part A of this contract for substantially all of the irrigable lands in the District as announced by the Secretary in a written notice to the District setting forth the date of such availability. Such notice shall be furnished to the District at least six (6) months prior to the date of the commencement of the development period.

ESTIMATED COST OF OPERATION AND MAINTENANCE TO BE PAID IN ADVANCE

21. (a) During the time that the distribution system or
[fol. 35] any part thereof is being operated by the United

States, as provided in Article 22, commencing with the first year of the development period, and each calendar year thereafter the District will pay in advance to the United States not later than January 1, upon estimates therefor to be furnished by the United States on or before September 1 next preceding, the estimated cost of operation and maintenance for such calendar year. The surplus of any amount so advanced by the District for operation and maintenance by the United States during any calendar year shall be credited on future estimated cost of operation and maintenance by the United States: *Provided*, That any such operation and maintenance charges paid to the United States by the District during the development period which are in excess of the actual cost of the operation and maintenance of the distribution system by the United States for such development period shall be credited to the construction obligation of the District.

(b) Whenever in the opinion of the contracting officer the amounts available from payments made by the District of the estimated annual operation and maintenance charges will be inadequate properly to operate and maintain the distribution system to the end of any calendar year, he may give written notice to the District, herein styled supplemental operation and maintenance charge notice, stating therein the amount of additional advance payment of funds required for such operation and maintenance, and the District shall pay the amount thereof on or before the dates specified in such supplemental operation and maintenance charge notice.

(c) Any amount of said operation and maintenance payments by the District, for any year subsequent to the development period, remaining unexpended and unobligated in the possession of the United States on the effective date [fol. 36] of a transfer in whole or in part of the distribution system to the District for operation and maintenance, in accordance with Article 22 hereof, shall be refunded to the District.

(d) To the extent that the distribution system is operated and maintained by the United States, there shall be in-

cluded as a part of the operation and maintenance costs, as covered by the provisions of this article, such items for administration, supervision, inspection, replacement, and general expenses as properly are chargeable to such work in the opinion of the contracting officer.

TRANSFER OF OPERATION AND MAINTENANCE TO DISTRICT—UNITED STATES TO BE HELD HARMLESS

22. (a) On the date of the commencement of the development period, the District shall take over and at its own expense operate and maintain the distribution system or any part thereof described in a transfer notice to be furnished to the District by the Secretary. The District agrees to accept, upon the effective date of the transfer notice, the care, operation, and maintenance of the transferred works and thereafter, without expense to the United States, to care for, operate and maintain the transferred works and deliver water therefrom in full compliance with the Federal reclamation laws and the terms of this contract and in such manner that said works shall remain in as good and efficient condition for the development, diversion, and distribution of the aforesaid water supply as on the effective date of such transfer to the District. The District will use all proper methods to secure the economical and beneficial use of the water delivered by means of the distribution system.

(b) At any time prior to full payment of the construction [fol. 37] obligation that the contracting officer determines that the District has not cared for, operated, maintained, or delivered water from the transferred works in the manner as aforesaid, the United States may take back and operate and maintain such works, and the District hereby agrees to surrender possession of said works. The works so taken back for operation and maintenance by the United States may similarly be retransferred to the District, upon furnishing the District ninety (90) days' written notice of intention to retransfer. If any works are taken back by the United States at such time that funds for the operation and maintenance cannot be advanced in accordance with

the procedure set forth in Article 21 hereof, the District hereby agrees, on the basis of statements of estimates to be submitted by the contracting officer, to advance sufficient funds to provide for the operation and maintenance of such works until such funds can be provided under the procedure set forth as aforesaid in Article 21 hereof.

(c) No substantial change in any of the transferred works shall be made by the District without first obtaining the written consent of the contracting officer. The District shall make promptly any and all repairs to the transferred works which, in the opinion of the contracting officer, are deemed necessary for the proper care, operation, and maintenance of the same. If at any time, in the opinion of the contracting officer, any part of the transferred works shall from any cause be in a condition unfit for service, he may order that the water be turned out and shut off from that part of the distribution system until, in his opinion, such property is put in proper condition for service. In the event the District neglects or fails to make such repairs, [fol. 38] the United States may cause the repairs to be made and may charge the cost therefor to the District, which charge the District shall pay in the manner provided in Article 23 hereof. The District shall provide for the collection of sufficient operation and maintenance or toll charges to pay all such bills to the United States within the time states herein in addition to providing the necessary funds to meet the other obligations of the District.

(d) The United States may cause to be made from time to time, but in any event no more than three times per year, a reasonable inspection of the transferred works to ascertain whether the terms of this contract are being executed by the District. Such inspection shall include examination of the transferred property and of the books, records, and papers of the District together with examinations in the office of the Bureau of Reclamation of all contracts, papers, plans, records, and programs connected with the said property. The actual expenses of such inspections and examinations shall be paid by the District to the United States in the manner provided in Article 23 hereof.

(e) No liability shall accrue against the United States, its officers and employees because of damages caused by the operation of the distribution system by the District.

District to Pay Certain Miscellaneous Costs Relating to Transferred Works

23. In addition to the other payments to be made by the District as provided by this contract, the District shall pay to the United States, on or before April 1 of the calendar year following that in which the same shall have been incurred and a statement thereof furnished by the United [fol. 39] States, the following costs:

(a) Such items of cost incurred by the United States in connection with the distribution system for administration, supervision, and inspection during the time the distribution system is operated and maintained by the District and for the period covered by the statement;

(b) The cost of repairs to transferred works made by the United States as provided in Article 22 hereof.

Computation of Costs

24. The actual cost of the distribution system, which will constitute the District's construction obligation, shall embrace all expenditures of whatsoever kind in connection with, growing out of, or resulting from work performed in connection with the distribution system, including but not limited to the cost of labor, material, equipment, engineering, and legal work, superintendence, administration and overhead, rights-of-way, property and damage of all kinds, and shall include all sums expended by the Bureau of Reclamation in surveys and investigations in connection with the irrigation of District lands, both prior to and after the execution of this contract, and the expense of all soil investigations and other preliminary work. The determination of what costs are properly chargeable hereunder, and the amount thereof shall conclusively be made by the contracting officer.

End of Part B

AGREED CHARGES A GENERAL OBLIGATION OF THE DISTRICT

25. The District as a whole is obligated to pay to the [fol. 40] United States the charges becoming due as provided in this contract notwithstanding the individual default in the payment to the District by individual water users of assessments, tolls or other charges levied by the District.

ALL BENEFITS CONDITIONED UPON PAYMENT

26. Should any assessment or assessments levied by the District against any tract of land or water user in the District and necessary to meet the obligations of the District under this contract be judicially determined to be irregular or void or should the District or its officers be enjoined or restrained from making or collecting any assessments upon such land or from such water user as provided for herein, then such tract shall have no right to any of the benefits of this contract, and no use shall be made of the distribution system nor any water made available by the United States pursuant hereto be furnished for the benefit of any such lands or water users, except upon the payment by the landowner of his assessment or a toll charge for the use of the distribution system or such water, notwithstanding the existence of any contract between the District and the owner or owners of such tract. Contracts, if any, between the District and the water users involving service from the distribution system or water furnished pursuant to this contract shall provide that such use shall be subject to the terms of this contract. It is further agreed that the payment of charges at the rates and upon the terms and conditions provided for herein, is a prerequisite to the right to service from the distribution system or water furnished to the District pursuant to this contract; and no irregularity in leving taxes or assessments by the District, nor lack of authority in the District, whether affecting the validity of District taxes or assessments or not, shall be held to au- [fol. 41] thorize or permit any water user of the District to demand or receive service or water made available pur-

suant to this contract, unless charges at the rates and upon the terms and conditions provided for herein have been paid by such water user.

Levy of Taxes and Assessments—Fixing of Rates and Tolls

27. The District will cause to be levied and collected all necessary taxes and assessments and will use all of the authority and resources of the District, to meet its obligations hereunder, to make in full all payments to be made pursuant to this contract on or before the date such payments become due and to meet its other obligations under this contract. The District may, either or both, require the payment of toll charges or levy assessments for such water or service. All assessments levied by the District to meet the obligations accruing under this contract shall, unless otherwise determined by the Board of Directors of the District, be upon an *ad valorem* basis.

Refusal of Water in Case of Default

28. No water or service shall be furnished to the District or by the District to or for the use of any lands or parties therein during any period in which the District may be in arrears in the advance payment of operation and maintenance or toll or rental charges or for more than twelve (12) months in the payment of construction charges accruing under this contract. No water or service shall be furnished to or by the District pursuant to this contract for lands or parties which are in arrears in the payment to the District of any assessments, rates, tolls, or rental charges of the District levied or established by the District and necessary [fol. 42] for the purpose of raising revenues to meet the payment by the District to the United States of the District's obligation under this contract. The provisions of this article are not exclusive and action taken pursuant hereto shall not prejudice or preclude the United States from exercising any other remedy to enforce collection of any amounts due hereunder.

PENALTY UPON DELINQUENCY IN PAYMENT

29. Upon every installment of money required to be paid by the District to the United States pursuant to this contract which shall remain unpaid after the same shall have become due and payable, there shall be imposed a penalty of one-half (½) of one (1) percent per month of the amount of such delinquent installment from and after the date when the same becomes due until paid, and the District hereby agrees to pay said penalty: *Provided*, That no penalty shall be chargeable against the net amount of any adjustment made pursuant to Article 14 hereof.

DISTRICT TO KEEP BOOKS AND RECORDS AND REPORT CROP AND OTHER DATA

30. The District shall establish and maintain account and other books and records sufficient to enable it to furnish, in so far as the District is permitted to do so by the laws of the State of California, to the Bureau of Reclamation reports and statements to such extent and in such manner and form as may be prescribed by the United States as to information pertaining to (a) accounts and financial transactions of the District, in so far as such information pertains to this contract and operations thereunder, and (b) crops raised and agricultural and livestock products produced on the lands within the District, a report thereon to be furnished to the contracting officer annually on or before December 31.

[fol. 43] INSPECTION OF BOOKS AND RECORDS

31. Subject to applicable Federal laws and regulations, the proper officers or agents of the District shall have full and free access at all reasonable times to the Project account books and official records of the Bureau of Reclamation, in so far as the same pertain to the matters and things provided for in this contract, relating to the construction, acquisition, care, operation and maintenance of the distribution system, with the right at any time during office hours to make copies thereof, and the proper rep-

resentatives of the United States shall have similar rights in respect to the account books and records of the District.

CHANGES IN ORGANIZATION OF DISTRICT

32. While this contract is in effect no change will be made in the District either by inclusion or exclusion of lands, by partial or total consolidation or merger with another district, by proceedings to dissolve, or otherwise, except upon the contracting officer's written assent thereto.

TITLE TO REMAIN IN THE UNITED STATES

33. Title to all of the Project works, including the distribution system constructed by the United States pursuant to this contract, shall be and remain in the name of the United States until otherwise provided for by the Congress, notwithstanding the transfer hereafter of any of such works to the District for operation and maintenance.

LAND NOT TO RECEIVE SERVICE FROM DISTRIBUTION SYSTEM OR WATER FURNISHED TO DISTRICT BY UNITED STATES UNTIL OWNERS THEREOF EXECUTE CERTAIN CONTRACTS

34. (a) No water or service made available pursuant to this contract shall be furnished to any excess lands as de- [fol. 44] fined in Article 36 hereof unless the owners thereof shall have executed valid recordable contracts in form prescribed by the United States, agreeing to the provisions of Articles 34, 35, and 36 of this contract; agreeing to the appraisal provided for in Article 35 hereof and that such appraisal shall be made on the basis of the actual bona fide value of such lands at the date of the appraisal without reference to the construction of the Project, all as hereinafter provided; and agreeing to the sale of his excess lands under terms and conditions satisfactory to the Secretary and at prices not to exceed those fixed as hereinafter provided. No sale of any excess lands shall carry the right to receive water or service made available pursuant to this contract unless and until the purchase price involved in such sale is approved by the contracting officer, and upon proof of fraudulent repre-

sentation as to the true consideration involved in such sale the United States may instruct the District by written notice to refuse to furnish any water or service subject to this contract to the land involved in such fraudulent sales and the District thereafter shall not furnish said water or service to such lands.

(b) If Project water furnished to the District pursuant to this contract reaches the underground strata of excess land owned by a large land owner who has not executed a recordable contract and the large land owner pumps such Project water from the underground, the District will not be deemed to have furnished such water to said lands within the meaning of this contract if such water reached the underground strata of the aforesaid *excess* land as an unavoidable result of the furnishing of Project water by the District to nonexcess lands or to excess lands with respect to which a recordable contract has been executed.

[fol. 45] VALUATION AND SALE OF EXCESS LANDS

35. (a) The value of the excess irrigable lands within the District, held in private ownership of large land owners as defined in the next succeeding article hereof, for the purposes of this contract, shall be determined, subject to the approval thereof by the Secretary, by three appraisers. One of said appraisers shall be designated by the Secretary and one shall be designated by the District and the two appraisers so appointed shall name the third. If the appraisers so designated by the Secretary and the District are unable to agree upon the appointment of the third, the presiding justice of the Fourth District Court of Appeal of the State of California shall be requested to designate the third appraiser.

(b) The following principles shall govern the appraisal:

(i) No value shall be given such lands on account of the existing or prospective possibility of securing water or service from the distribution system.

(ii) The value of improvements on the land at the time of said appraisal shall be included therein, but shall also be set forth separately, in such appraisal,

(c) The cost of the first two appraisals and each subsequent appraisal requested by the United States shall be paid by the United States.

(d) Any improvements made or placed on the appraised land after the appraisal hereinabove provided for prior to sale of the land by a large land owner may be appraised in like manner.

(e) Excess irrigable lands sold by large land owners within the District shall not carry the right to receive water or service made available pursuant to this contract for such land and the District agrees to refuse to furnish [fol. 46] such water or service to land so sold until, in addition to compliance with the other provisions hereof, a verified statement showing the sale price upon any such sale shall have been filed with the District.

(f) The District agrees to take all reasonable steps requested by the contracting officer to ascertain the occurrence and conditions of all sales of irrigable land of large land owners in the District and to inform the United States concerning the same.

(g) A true copy of this contract and of each appraisal made pursuant thereto shall be maintained on file in the office of the District and like copies in such principal office of the Bureau of Reclamation as may be established hereafter in connection with the distribution system and shall be made available for examination during the usual office hours by all persons who may be interested therein.

EXCESS LANDS

36. (a) As used herein the term "excess land" means that part of the irrigable land within the District in excess of 160 acres held in the beneficial ownership of any single person, or in excess of 320 acres held in the beneficial ownership of husband and wife jointly, as tenants in common or by the entirety, or as community property; the term "large land owner" means an owner of excess lands and the term "nonexcess land" means all irrigable land within the District which is not excess land as defined herein.

(b) Each large land owner as a further condition precedent to the right to receive water or service made available pursuant to this contract for any of his excess land shall:

(i) Before any water is furnished by the District [fol. 47] to his excess land, execute a valid recordable contract in form prescribed by the United States, agreeing to the provisions herein contained in Articles 34, 35, and 36 and agreeing to dispose of his excess land in accordance therewith to persons who can take title thereto as nonexcess land as herein provided and at a price not to exceed the approved, appraised value of such *excess* land and within a period of ten (10) years after the date of the execution of said recordable contract and agreeing further that if said land is not so disposed of within said period of ten years the Secretary shall have the power to dispose of said land subject to the same conditions on behalf of such large land owner; and the District agrees that it will refuse to furnish said water or service to any large land owner other than for his nonexcess land until such owner meets the conditions precedent herein stated.

(ii) Within thirty (30) days after the date of notice from the United States requesting such large land owner to designate his irrigable lands under the Project which he desires to designate as nonexcess land, file in the office of the District, in duplicate, one copy thereof to be furnished by the District to the Bureau of Reclamation, his written designation and description of lands so selected to be nonexcess land and upon failure to do so the District shall make such designation and mail a notice thereof to such large land owner, and in the event the District fails to act within such period of time as the contracting officer considers reasonable, such designation will be made by the contracting officer, who will mail a notice thereof to the District and the large land owner. The large land owner shall become bound by any such action on the part of the District or the contracting officer and the District will [fol. 48] furnish said water and service only to the land so designated to be nonexcess land. A large land

owner may, with the consent of the contracting officer, designate land other than that previously designated as nonexcess land: *Provided*, That an equal acreage of the land previously designated as nonexcess shall, upon such new designation, become excess land thereafter, subject to the provisions of Articles 34, 35, and 36 of this contract, and shall be described in an amendment of such recordable contract as may have been executed by the large land owner, in the same manner as if such land had been excess land at the time of the original designation.

AMENDMENT OF FEDERAL RECLAMATION LAWS

37. In the event that the Congress of the United States repeals the so-called excess-land provisions of the Federal reclamation laws, Articles 34, 35, and 36 of this contract will no longer be of any force or effect, and, in the event that the Congress amends the excess-land provisions or other provisions of the Federal reclamation laws the United States agrees, at the option of the District, to negotiate amendments of appropriate articles of this contract, all consistently with the provisions of such repeal or amendment.

CONTINGENT UPON APPROPRIATIONS OR ALLOTMENTS OF FUNDS

38. The expenditure of any money or the performance of any work by the United States herein provided for which may require appropriations of money by the Congress or the allotment of funds, shall be contingent upon such appropriations or allotments being made. The failure of the Congress so to appropriate funds or the failure of an allotment of funds shall not relieve the District from any obligations then accrued under this contract and no liability shall accrue to the United States in case such [fol. 49] funds are not appropriated or allotted.

OFFICIALS NOT TO BENEFIT

39. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom,

but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

NOTICES

40. Any notice or announcement which the provisions hereof contemplate shall be given to one of the parties hereto by the other shall be deemed to have been given if deposited in the United States Post Office, on the part of the United States in a franked envelope addressed to the District at its office and on the part of the District in a postage prepaid envelope addressed to the Bureau of Reclamation, Department of the Interior, Sacramento, California, or such other address as from time to time may be designated by the contracting officer in a written notice to the District: *Provided*, however, That this article shall not preclude the effective service of any such notice or announcement by other means.

ASSIGNMENT PROHIBITED: SUCCESSORS AND ASSIGNS OBLIGATED: DEFAULT

41. The provisions of this agreement shall apply to and bind the successors and assigns of the respective parties, but no assignment or transfer of this contract or any part thereof or interest therein shall be valid until and unless approved by the United States. Any waiver at any time by either party to this contract of its rights with respect to a default, or any other matter arising in connection with this contract, shall not be deemed to be a waiver [fol. 50] with respect to any subsequent default or matter. All rights of action for breach of this contract are reserved to the United States as provided in Section 3737 of the Revises Statutes of the United States as amended (41 U.S.C. 15).

ASSURANCE RELATING TO VALIDITY OF CONTRACT

42. Promptly after the execution and delivery of this contract the District shall file and prosecute to a final decree, including any appeal therefrom to the highest

court of the State of California, in a court of competent jurisdiction a special proceeding for the judicial examination, approval, and confirmation of the proceedings had for the organization of the District and the proceedings of the District Board of Directors and of the District leading up to and including the making of this contract and the validity of the provisions thereof, as provided for by Section 23225 of the Water Code of California (St. 1943, Ch. 368, Div. 11, Part 6, Chap. 2, Art. 3, Sec. 23225, approved May 13, 1943); and this contract shall not be binding on the United States until said District organization, proceedings, and contract shall have been so confirmed by a court of competent jurisdiction or pending appellate action if *ground* for appeal be laid.

PERFORMANCE OF WORK WITH CONTRIBUTED FUNDS

43. (a) Pursuant to the Act of Congress of March 4, 1921 (41 Stat. 1367, 1404), the United States will perform with funds contributed by the District any construction or maintenance work on the distribution system not otherwise provided for by this contract, or any construction work covered by this contract but for which funds may not be available: *Provided*, That the undertaking of any such work and the plans therefor must be approved by the [fol. 51] United States. When the undertaking of such work is approved, funds therefor shall be advanced by the District as may be directed by the contracting officer and there shall be submitted to the United States a certified copy of the resolution of the Board of Directors of the District describing the work to be done and authorizing its performance with contributed funds.

(b) After completion of any work so undertaken the District will be furnished with a statement of the cost thereof, and any unexpended balance of the funds will be refunded to the District or applied as otherwise directed by the District, and the amount by which the cost of such work exceeds the amount of the funds advanced by the District therefor shall be paid by the District to the United States as the contracting officer may direct.

In Witness Whereof, the parties hereto have hereunto affixed their names the day and year hereinabove written.

The United States of America

By Richard L. Boke
Regional Director, Region 2,
Bureau of Reclamation,
U. S. Department of the Interior.

Approved as to Legal
Form and Sufficiency

John K. Bennett
Acting Regional Counsel

Ivanhoe Irrigation District

By A. S. McKellar
President of the Board
of Directors of Ivanhoe
Irrigation District

[fol. 52]

(Seal)

Attest:

Russell Davis
Secretary of the Board of
Directors of Ivanhoe Irrigation
District (District Seal)

[fol. 70] In Superior Court of Tulare County

Demurrer of Defendant Courtney McCracken to Complaint—Filed December 13, 1949

Now comes Courtney McCracken, a landowner, a water user and an assessment payer within the Ivanhoe Irrigation District, and as such, an interested party and a defendant in the above-entitled action, and appears in said action and demurs to plaintiff's complaint on file in said action upon the following grounds:

I

That said complaint does not state facts sufficient to constitute a cause of action.

II

That said complaint does not state facts ufficient to constitute a cause of action against this demurring defendant.

WHEREFORE, said defendant prays that said action be dismissed and that he recover of and from the plaintiff in said action his costs of suit incurred in said action.

Harry W. Horton, W. R. Bailey, By W. R. Bailey,
Attorneys for said defendant Courtney McCracken.

Points and Authorities

1. The proposed contract involves unconstitutional delegation of Legislative power of California to

(a) The Congress;

(b) The Secretary of the Interior;

[fol. 71] (c) The Secretary of the Interior and the District, acting jointly.

Constitution of California, Article IV, Section 1.
Division 11, Water Code of California.
16 Corpus Juris Secundum 343.

2. The land limitation provisions of the Reclamation Laws do not apply to Central Valley Project.

Reclamation Act of 1902 (32 Stat. 388) and Acts amendatory thereof and supplemental thereto.

Central Valley Project Reauthorization Acts (50 Stat. 850; 54 Stat. 1198, 1199).

3. The contract unconstitutionally deprives owners of excess land of property without due process of law.

Constitution of California, Article I, Section 13.
Constitution of U. S., Amendment 14.

Reclamation Act of 1902, and Acts amendatory thereof and supplemental thereto.
Chap. 2, Pt. 6, Div. 11, Water Code of California.

4. The "Irrigation District Federal Cooperation Law" violates the constitutional rule requiring uniform operation of General Rules and prohibiting Special Laws where General Laws may be applicable.

Constitution of California, Article I, Section 11; Article IV, Section 25, subd. 33.
Chap. 2, Pt. 6, Div. 11, Water Code.

5. The proposed contract is not authorized by Federal law.

Reclamation Project Act of 1939 (53 Stat. 1187), Section 9 (e).

[fol. 72] Respectfully submitted,

Harry W. Horton, W. R. Bailey, By W. R. Bailey,
Attorneys for said defendant Courtney McCracken.

Service admitted, December 13, 1949

[fol. 77] In Superior Court of Tulare County

Petition to Be Allowed to Appear as Amici Curiae—Filed October 13, 1950

To the Honorable Benjamin C. Jones:

Your petitioners, as friends of the court, respectfully represent that the above-entitled cause involves difficult and novel questions of law; that the United States is a party to the contract at issue in the above-entitled cause and thus has an interest in its outcome; that as attorneys in the employ of the Bureau of Reclamation of the United States Department of the Interior, your petitioners have devoted special attention to said questions; and request

that, in order to present the views of the United States, they be permitted, as friends of the court, to present oral argument and to file a brief in said cause on the questions therein involved.

Respectfully submitted,

Leland O. Graham, Regional Counsel, Region 2, Bureau of Reclamation, United States Department of the Interior.

Ralph M. Brody, Assistant Regional Counsel, Region 2, Bureau of Reclamation, United States Department of the Interior.

[fol. 85] In Superior Court of Tulare County

Notice of Motion to Strike Petition to Be Allowed to Appear as Amici Curiae—Filed October 18, 1950

To Leland O. Graham, Regional Counsel, Region 2, Bureau of Reclamation, United States Department of the Interior; Ralph M. Brody, Assistant Regional Counsel, Region 2, Bureau of Reclamation, United States Department of the Interior; E. I. Feemster and James Renwick McBride, Attorneys for Plaintiff; W. S. Bailey and Harry W. Horton, Attorneys for Defendant Courtney McCracken:

You Will Please Take Notice that on Monday, the 23rd day of October, 1950, at the hour of 10:00 o'clock A.M., or as soon thereafter as counsel can be heard, at the Court Room in the Court House in the City of Visalia assigned for the hearings to be held in the above entitled cause before the Honorable Benjamin C. Jones, Judge assigned by the Judicial Counsel to hold said hearings, the undersigned, State of California, will move for an order striking from the files that certain instrument filed October 13, 1950, entitled "Petition to be Allowed to Appear as Amici Curiae" and signed by Leland O. Graham and Ralph M. Brody.

Said Motion will be made and based on all the pleadings, records, papers and files in said Court in said cause, and

upon the ground that the United States is not entitled to appear in said cause directly, or through any agents or attorneys, otherwise than by general appearance.

Dated this 16th day of October, 1950.

The State of California, Defendant, Fred N. Howser, [fol. 86] Attorney General, Arvin B. Shaw, Jr., Assistant Attorney General, Gilbert F. Nelson, Deputy Attorney General, Attorneys for the State of California.

POINTS AND AUTHORITIES.

1. This action is in rem.

Secs. 23225 and 22671 Water Code.

2. The caption of the Complaint and the allegations of paragraph II of the Complaint show that the defendants are all parties and persons having or claiming to have an interest in the approval and confirmation by this Court of the Contract, copy of which is attached to the Complaint and marked Exhibit "A".

3. The Petition, above mentioned, alleges "That the United States is a party to the contract at issue in the above entitled cause, and thus has an interest in its outcome".

4. The United States has required this action to be commenced. Sec. 1 of the Act of May 15, 1922 (42 Stat. 541; 43 U.S.C. 511).

Article 42 of Contract.

5. The United States is in the same position as the State of California with respect to this proceeding.

People v. *Linda Vista Irr. Dist.*, 128 Cal. 477;
People v. *Perris Irr. Dist.*, 132 Cal. 289.

[fol. 87] 6. A party to an action cannot appear otherwise than by general appearance.

Sec. 422, Code of Civil Procedure of State of California.

7. A party to an action, therefore, cannot appear, either directly or through agents or attorneys, as amicus curiae.

[fol. 88] In Superior Court of Tulare County

Opposition of State of California to Petition of Leland O. Graham and Ralph M. Brody to Be Allowed to Appear as Amici Curiae—Filed October 18, 1950

To the Honorable Superior Court Above Entitled:

The State of California, a party defendant in the above entitled proceeding, opposes the Petition herein filed by Leland O. Graham, Regional Counsel, Region 2, Bureau of Reclamation, United States Department of the Interior, and Ralph M. Brody, Assistant Regional Counsel of said Bureau, to be allowed to appear as amici curiae in the above entitled cause, upon the following grounds:

1. That this proceeding under Sections 23225 and 22671 of the Water Code of California is a proceeding in rem. That the caption of the Complaint and Summons in this action is "The Ivanhoe Irrigation District, an irrigation district, Plaintiff —vs— All Parties and Persons Having or Claiming to Have any Interest in the Approval and Confirmation of the Proceedings for the Organization of the Ivanhoe Irrigation District, and all Parties and Persons in any way Interested in the Certain Contract Dated September 23, 1949, Entitled", etc; and it is alleged in paragraph II of said Complaint that "the defendants herein are all parties and persons having, or claiming to have any interest in the judicial examination, approval and confirmation of:— * * *

(2) All the proceedings leading up to and including the execution and delivery of the above mentioned contract; and

(3) The validity of the contract and of each and every term and provision thereof; and

[fol. 89] (4) The right and authority of the respective persons signing the same and the parties thereto to so execute the contract; * * *"

2. That the United States, whom said persons represent as attorneys, is a party defendant in said cause and cannot be permitted to appear directly, or through its agents

as amici curiae. That as stated in said Petition, the United States is a party to the Contract at issue in the above entitled cause, and thus has an interest in its outcome. Further, that the United States, by the Act of May 15, 1922 (42 Stat. 541, 43 U. S. C. 411) has required that this action be filed, and likewise by Article 42 of the Contract, which is attached to the Complaint herein and marked Exhibit "A", has required that this action be filed and prosecuted to a final decree.

3. That under Section 422, Code of Civil Procedure of California, the only pleadings allowed on the part of a defendant are:

"1. The demurrer to the complaint;

2. The answer;

3. The cross-complaint;

4. The demurrer to the answer to the cross complaint. * * * *".

Wherefore, the State of California opposes said Petition and respectfully prays that an order be made denying said Petition, and that it be ordered, adjudged and decreed that the United States is not entitled to appear in this proceeding otherwise than by general appearance; and for all other proper relief.

Dated this 16th day of October, 1950.

[fol. 90] The State of California, Defendant, Fred N. Howser, Attorney General, Arvin B. Shaw, Jr., Assistant Attorney General, Gilbert F. Nelson, Deputy Attorney General, Attorneys for the State of California.

[fol. 100] In Superior Court of Tulare County

Answer of Defendants, the People of the State of California.

Come now defendants, the People of the State of California, and, without waiving their demurrer to the complaint herein filed, answer said complaint and for a first defense admit, deny and allege as follows:

First Defense

I.

Allege that the State of California is one of the United States of America; that these answering defendants appear in the sovereign, governmental, and proprietary capacities of said State, in its own interest and for the protection of its own rights; also as parens patriae, in the interest of and for the protection of all its citizens, residents, landowners and water users, and its agency, the plaintiff district, and to protect the integrity and proper application of its Constitution and laws respecting water and the use thereof, water rights, contracts, property and property rights; also as trustor of an express trust, hereinafter described, which trust relates to the use of water in the Central Valley Project hereinafter mentioned; also as absolute owner of the corpus of the water to be used in and by said Central Valley Project and as owner of the right of reversion of any rights of use of such water which may be forfeited or otherwise terminated for non-use or otherwise; and as owner, as trustee for the use and benefit of the Central Valley Project, of the right to apply to beneficial use for irrigation in said Central Valley Project certain waters of streams tributary to the Sacramento and San Joaquin Rivers, which waters will be commingled with other waters to be used in said project.

[fol. 101]

II.

Allege that Central Valley Project is a multiple-purpose project designed and planned for the general purposes of irrigation of arid lands in the Great Central Valley of California, improvement of navigation, river regulation,

flood control, incidental development of hydroelectric power, repulsion of salt water at the mouth of the Sacramento River, and related purposes; that the Great Central Valley of California is the valley which lies in the basin of the Sacramento and San Joaquin Rivers, and their tributaries; that said project contemplates the use in said valley, for irrigation, municipal, domestic, power and other purposes, of the waters of the Sacramento and San Joaquin Rivers and their tributaries; that said waters arise, flow and discharge into the Pacific Ocean wholly within the State of California; that there are no public lands of the United States in said valley; that said project was planned and generally designed by the State of California; that the plans, purposes and features of said project are substantially as set out and described in Bulletins Nos. 25, 26 and 29 of the Division of Water Resources, Department of Public Works, of the State of California, which bulletins constitute reports submitted by said division to the California Legislature of 1931 pursuant to acts of said Legislature requiring the preparation and submission of said reports; that said bulletins are hereby referred to and incorporated by reference in this Answer.

III.

Allege that by act of its Legislature adopted August 5, 1933, and effective January 13, 1934 (California Statutes 1933, p. 1042) the State of California authorized the construction of the Central Valley Project and created a state [fol. 102] agency designated "Water Project Authority of the State of California," and authorized said Authority to construct, maintain and operate said project and to use therefor the proceeds of sale of certain state bonds authorized by said Act; that following the adoption of said Act it became and was impracticable for the state to sell said bonds and construct the project; that by the Acts of Congress designated the Emergency Relief Appropriation Act of 1935 and the Rivers and Harbors Act of 1935, by executive orders signed by the President September 10, 1935, and November 16, 1935, a finding of feasibility signed by the Secretary of the Interior and approved by the President December 2nd, 1935, and the Acts of Congress desig-

nated the Rivers and Harbors Act of 1937, and the Rivers and Harbors Act of 1940, and the Act of Congress approved October 14, 1949, Public Law No. 356, 81st Congress, first session, and the Act of Congress approved September 26, 1950, Public Law 839, 81st Congress, second session, the Secretary of the Interior was authorized to construct said Central Valley Project and has undertaken and entered upon the construction of said project; that certain features of said project have been constructed and others are approaching completion of construction.

IV.

Allege that the major engineering features of said project include:

(1) Shasta Dam and reservoir and hydroelectric power plant on the Sacramento River in Shasta County, California, with certain electric transmission lines leading from said power plant, and appurtenances thereof;

[fol. 103] (2) Contra Costa Conduit, a canal leading from the Sacramento-San Joaquin delta to the vicinity of Martinez;

(3) Delta Cross-Channel, to conduct water of and from the Sacramento River and its tributaries across the said delta to the lower San Joaquin River, together with the Tracy Pumping Plant and the Delta-Mendota Canal, to convey water from said Delta Cross-Channel to the Mendota Pool in the San Joaquin River;

(4) Friant Dam and reservoir on the Upper San Joaquin River near Friant, Fresno County;

(5) Madera Canal, to conduct water stored in Friant reservoir northerly to a point on Chowchilla River;

(6) Friant-Kern Canal, to conduct water stored in Friant reservoir southerly to a point on Kern River near Bakersfield.

V.

Allege that by the contract dated July 27, 1939, between the United States and the San Joaquin and Kings River

Canal and Irrigation Company, Incorporated, mentioned in Article 16 (d) of the contract, which is sought to be validated in plaintiff's complaint herein, and by other comparable contracts, the United States acquired estoppels against the exercise by said company and others of riparian rights claimed by them to use for irrigation and otherwise waters of the San Joaquin River and its tributaries by diversion in the vicinity of and below Mendota Pool, and the United States in said contracts agreed to deliver to said riparian claimants, in exchange, certain waters of the Sacramento River and its tributaries, to be imported from the latter to Mendota Pool through and by means of the Delta Cross-Channel, Tracy Pumping Plant and the Delta-Mendota [fol. 104] Canal; that the United States acquired said estoppels in order that it might be able to store in Friant Reservoir, free of the claims of said parties, waters of the San Joaquin River arising above said reservoir and divert the same northerly through the Madera Canal and southerly through the Friant-Kern Canal, for irrigation of lands in the counties extending from Madera to Kern, in general along the easterly side of the San Joaquin Valley floor; that it is intended and proposed by the contract herein sought to be validated that the United States shall deliver waters impounded in Friant Reservoir through Friant-Kern Canal for irrigation of the lands in plaintiff District.

VI.

Allege that the State of California, acting through its Department of Finance and Director of Finance, pursuant to certain statutes adopted by the Legislature of California, heretofore filed with the Division of Water Resources of the Department of Public Works of California certain applications for the appropriation of unappropriated waters of the Sacramento and San Joaquin Rivers and their tributaries, for the use and benefit of the Central Valley Project and the owners of lands to be irrigated therefrom; that by assignments, made pursuant to said Statutes, the State of California, acting through its Department of Finance and Director of Finance, assigned to the United States for the use and benefit of said Central Valley

Project certain of said applications, to-wit: by assignment dated September 3, 1938, assigned Application No. 5625 to appropriate water of the Sacramento River at Shasta Dam for power purposes and Application No. 5626 to appropriate water of the Sacramento River at Shasta Dam for [fol. 105] irrigation and domestic use, saline and flood control, and navigation purposes and Application No. 9364 to appropriate water of the Sacramento River at points of diversion located along the Sacramento River from Shasta Dam to the Sacramento-San Joaquin Delta and on the channels of said delta for irrigation and domestic use, saline and flood control, and navigation purposes, and Application No. 9365 to appropriate water of the Sacramento River at Shasta Dam for power purposes; and by assignment dated September 30, 1939, assigned Application No. 5637 to appropriate water of the San Joaquin River at Friant Dam for power purposes, and Application No. 5638 to appropriate water of the San Joaquin River at Friant Dam for irrigation, domestic and flood control purposes, and Application No. 9369 to appropriate water of the San Joaquin River at Temperance Flat Dam in Sections 24 and 25, T. 10 S. R. 21 E. M.D.B. & M. and at Friant Dam for irrigation, domestic and flood control purposes; that a true copy of said assignment dated September 3, 1938, is hereto attached, marked "Exhibit A", and a true copy of said assignment dated September 30, 1939, is hereto attached, marked "Exhibit B", and said copies are by reference made a part hereof,

VII.

Allege that the State of California has not assigned to the United States, nor to anyone, any of the applications to appropriate water on the tributaries of the Sacramento and San Joaquin Rivers, hereinabove mentioned.

VIII.

Allege that by virtue of the terms of said assignments the State of California has become and is the trustor of an express trust; the United States has become and is the Trustee of that trust; the landowners to be served

[fol. 106] water from the works of the Central Valley Project, including the landowners of plaintiff district, have become and are the beneficiaries of that trust; that any and all claims or interests of the United States obtained by the contract, mentioned in Article 16 (d) of the contract herein sought to be validated, and similar or comparable contracts, and under the assignments, Exhibits "A" and "B" hereto, are held by the United States as such trustee under said express trust and as a part of a trust fund or res for the use and benefit of the Central Valley Project and the landowners to be served water from the works of said project, and in particular the landowners of plaintiff district; that the State of California, as trustor and as parens patriae, is entitled to be heard, among other things, as to all matters relating to the administration and execution of said trust by said trustee and entitled to require that the trustee administer said trust according to its true intent and meaning.

IX.

Allege that said Central Valley Project will provide a stabilized source of supplemental water supply for irrigation and other purposes for many hundreds of thousands of acres of land now under cultivation and irrigation in the Great Central Valley of California; that the construction, operation and maintenance of said Central Valley Project will profoundly affect the economy and welfare of the people of at least 21 of the 57 counties of California, embracing more than half of the cultivated agricultural lands of the State; that twenty or more contracts between the United States of America and irrigation and water districts organized under California law, generally com-[fol. 107] parable in character to the contract herein sought to be validated, have been or will in the near future be executed and submitted to the courts of California for validation in actions similar to the case at bar; that questions of law and fact identical with or similar to those involved in the case at bar will be presented in said future validation actions; that the original cost estimate of the Bureau of Reclamation, made in 1936, for the construction of said Central Valley Project was $170,000,000; that the

last official estimate disclosed by the Bureau of Reclamation for the cost of construction of said Project, made in January, 1950, was $581,886,000; that said last estimate is believed to include the cost of the American River Development which was added to said project by Act of Congress adopted October 14, 1949, but does not include the cost of the Sacramento Valley Canals added to said project by Act of Congress adopted September 26, 1950; that the estimate of cost of said Sacramento Valley canals made by the Bureau of Reclamation in May, 1949, was from $40,000,000 to $65,000,000; that said Secretary and said Bureau of Reclamation seek and have, by official report to Congress, recommended the expansion of said Central Valley Project to include units and features in addition to those now authorized for construction by the Congress, which said Bureau estimates will cost in excess of $3,000,000,000; that it is the policy of said Secretary and said Bureau and they intend that the use of water throughout both said presently authorized project and said expanded project shall be governed by contracts made under Section 9 (e) of the Act of Congress designated the Reclamation Project Act of 1939, which contracts shall be generally similar or comparable to the contract herein sought to be validated; that said expanded Central Valley Project is [fol. 108] generally described and outlined in the report of said Bureau entitled "Central Valley Basin", being Senate Document 113, Eighty-first Congress, first session, to which reference is hereby made; that the construction, operation and maintenance of said expanded Central Valley Project would profoundly affect the economy and welfare of the owners of several million acres of land, now irrigated or unirrigated, in the Great Central Valley of California, and of several millions of the citizens, residents, landowners and water-users of the State.

X.

Allege that the United States is one of the parties defendant described in the caption of plaintiff's complaint and in paragraph II of said complaint, and is a party to this action.

XI.

Answering the allegations of paragraph numbered II of plaintiff's complaint, these answering defendants deny that the purported contract attached to plaintiff's complaint and marked "Exhibit A" is a valid and binding, or valid or binding contract; deny further that the persons executing said contract on behalf of the parties thereto, or any of them, acted in the official capacity of them, or any of them, or within the scope of the authority of them, or any of them; allege on the contrary that said persons, in purporting to execute said contract, acted beyond the respective authority of them, and each of them.

XII.

Answering the allegations of paragraph numbered III of Plaintiff's complaint, these answering defendants deny that plaintiff district has ever accepted said contract; deny that the resolution alleged to have been passed and adopted [fol. 109] by the Board of Directors of plaintiff district was regularly or lawfully or validly adopted.

XIII.

Answering the allegations of paragraph numbered IV of plaintiff's complaint, these answering defendants deny that said contract was duly and regularly, or duly, or regularly, submitted to Districts Securities Commission of the State of California; admit that said Commission on July 9, 1949, made the report and order, of which copy is set forth in "Exhibit C" attached to plaintiff's complaint (as corrected and amended by the letter of said Commission dated July 20, 1949, attached to said "Exhibit C"); deny that in making said report and order said Commission gave, or intended to give, its unqualified approval to the contract herein sought to be validated, or to the terms and provisions, or terms, of provisions, of said contract, and allege that said approval was and is conditional in several particulars, including among other things the condition that the legality and validity of said contract be determined by this Court.

XIV.

Answering the allegations of paragraph numbered V of plaintiff's complaint, these answering defendants deny that pursuant to the resolution of May 24, 1949, referred to in said paragraph or in pursuance of any further resolution of said Board of Directors adopted July 19, 1949, or at all a special election was regularly called to be held in said district; deny that said special election was regularly called; deny that said special election was duly called, noticed and held, or duly called, or duly noticed, or duly held; deny that it was legally and fairly conducted, or [fol. 110] legally or fairly conducted; deny that it was called, noticed, held and conducted; or called, noticed, held or conducted in the manner provided by law; deny that the execution of said contract was duly authorized, or authorized at all, by the electors of plaintiff district as provided by law, or at all; deny that in pursuance of said resolution of May 24th, 1949, or at all, or in pursuance of a resolution of said Board of Directors adopted August 29, 1949, or at all, said contract was regularly executed, or executed at all, by the parties thereto, or by either of them.

XV.

Answering the allegations of paragraph numbered IX of plaintiff's complaint, these answering defendants deny that the contract herein sought to be validated is made pursuant to and in compliance with, or pursuant to, or in compliance with, the laws, or any law, of the State of California and of the United States of America, or of either of them.

XVI.

Answering the allegations of paragraph numbered X of plaintiff's complaint, these answering defendants admit that in the acts and proceedings of the Board of Directors of plaintiff district mentioned in said paragraph, said acts and proceedings were done or performed by said Board at meetings regularly called and held at the usual place for the holding of such meetings, and that at each such meeting a quorum of said Board was present and partici-

pating, and voted in favor of the action taken, and in all things connected with the making, execution and delivery of said contract plaintiff district and its officers, directors [fol. 111] and agents acted in good faith and in pursuance of that which was in each instance by them deemed to be, and is still deemed to be, to and for the best interests and advantage of the district and the inhabitants thereof and the landowners, assessment payers, water users and all other persons interested therein; deny generally and specifically each and every material allegation contained in said paragraph X which is not in this paragraph expressly admitted.

Second Defense.

As and for a Second Defense to Plaintiff's Complaint, These Answering Defendants Admit, Deny and Allege as Follows:

I.

That paragraphs numbered I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV and XVI of the first defense herein are hereby referred to and made a part of the second defense with the same force and effect as if set out herein word for word.

II.

That the contract, a copy of which is attached to the complaint herein and marked "Exhibit A", is illegal, invalid, unauthorized and void; that among the particulars in which the said contract is illegal, invalid, unauthorized and void are the matters hereinafter set out in this second defense.

III.

That Sections 23225, 22672 and 22673 of the Water Code of California purporting to authorize this action, are unconstitutional and void in this: that the period for publication of summons and for appearance of interested parties in such an action is unreasonably short, in view of the [fol. 112] character and scope of the action as an in rem

action, and the landowners and water users of said district and other interested parties are thereby deprived of property without due process of law and without compensation.

IV.

That among other things, said contract is, in each of the following particulars, unauthorized by any law of the United States:

(a) That said contract purports to be a contract for the sale of water by the United States to plaintiff district; that such a contract is not authorized by any law of the United States;

(b) That said contract is made upon such terms that the cost of construction of works connected with water supply for said district will not be repaid to the United States by said district, or at all, within 40 years; that such a contract is not authorized by any law of the United States;

(c) That said contract, in and by Articles 34, 35 and 36, purports to impose certain land limitations upon said district and the owners of land in said district; that the imposition of such land limitations is not authorized by the Acts of the Congress of the United States by which the construction, operation, and maintenance of the Central Valley Project, of which said district is a part, were authorized, nor by any law of the United States;

(d) That said contract purports to terminate delivery of water by the United States to plaintiff district at the end of 40 years; that such a contract is not authorized by any law of the United States.

V.

That said contract is not authorized by and violates the [fol. 113] law of California in the following particulars, among others:

(a) That from time to time plaintiff district will possess surplus water not then necessary for use within the district, and said district will be entitled, under Section 22559

of the Water Code of California, to dispose of such surplus water for use thereof outside plaintiff District; that Article 12(b) of said contract purports to prohibit such disposal without the contracting officers' written consent; that such provision is not authorized by any law of California;

(b) That certain waste, seepage and return flow water derived from water delivered to the district under said contract will escape and be discharged beyond the district's boundaries; that Article 15(c) of said contract purports to reserve to the United States rights to such water; that said provision is not authorized by any law of California;

(c) That in the ordinary course of business, plaintiff district will be required to levy assessments upon the lands therein; that Article 26 of said contract prohibits the delivery of water made available pursuant to said contract to any water user of the district unless such assessments are paid, even though such assessments be judicially determined to be irregular or void; that such provision is not authorized by any law of California;

(d) That Article 27 of said contract permits the levy of assessments by the plaintiff district upon an ad valorem basis; that such levy upon lands denied delivery of water made available pursuant to the contract, under Articles 34, 35 and 36 of said contract, would constitute a deprivation of property without due process of law, and without compensation; that said provision is not authorized by any [fol. 114] law of California;

(e) That Article 32 of said contract purports to prohibit any change in the district by partial or total consolidation or merger with another district, without the written consent of the contracting officer; that said provision is not authorized by any law of California;

(f) That said contract contains no statement of the maximum amount of money to be payable to the United States by plaintiff district for construction purposes and cost of water supply and acquisition of property, or any thereof; that it is and was impossible for plaintiff district to provide such a statement, as required by Section 23223 of the Water Code of California, in the notice of the elec-

tion at which the electors of said district purported to authorize the execution of said contract, which election is alleged in paragraph numbered V of said complaint to have been held in said district; that such a statement was not contained in said notice of election; that such a notice of election is not authorized by any law of California.

VI.

That Chapter 2, Part 6, Division 11, of the Water Code of California, designated the "Irrigation District Federal Cooperation Law", does not authorize the execution of said contract by plaintiff district, and if it were so construed as to authorize the execution of such contract, it would be unconstitutional and void in this:

(a) That said law does not have a uniform operation; and

(b) That said law would be a local or special law in a case where a general law can be made applicable.

VII.

That Section 23195 of the Water Code of California, [fol. 115] purporting to authorize irrigation districts to contract with the United States, is unconstitutional and void if interpreted and applied so as to permit such contracts to be made under the terms of Acts of Congress adopted after the year 1917; that the contract herein sought to be validated is not authorized and could not be made under or in accordance with the terms of the Federal Reclamation Act of June 17, 1902, and acts amendatory thereof or supplementary thereto adopted by the Congress prior to the adoption in 1917 by the California legislature of said Irrigation District Federal Cooperation Law.

VIII.

That said contract would deprive landowners of said district of property without due process of law and without compensation, in the following particulars, among others:

(a) By the land limitation provisions of Articles 34, 35 and 36;

(b) By application of the provisions of Section 5 of the Reclamation Act of June 17, 1902, requiring any such landowner to be an actual bona fide resident upon his land, or occupant thereof residing in the neighborhood of said land;

(c) By application of the provisions of Section 3 of the Act of Congress, adopted August 9, 1912, requiring excess holdings prohibited by said contract to be forfeited to the United States;

(d) By application of the provisions of Section 10 of said Act of June 17, 1902;

(e) By application of the provisions of Section 15 of the Act of Congress adopted August 4, 1939, and of several [fol. 116] intervening acts authorizing the Secretary of the Interior to make rules and regulations respecting the carrying out of the contract, such rules and regulations not being confined to rules and regulations adopted and existing at the time of the execution of said contract;

(f) That the Secretary of the Interior unlawfully contends that under the provisions of the Federal Reclamation Laws he has the authority to make rules and regulations:

(1) requiring cropping practices approved by him;

(2) regulating and limiting the size of farm units to not less than 10 nor more than 160 acres;

(3) requiring residence of the landowner upon his land, or occupancy thereof by him;

(4) limiting delivery of water to farm units smaller than 160 acres;

(5) determining the irrigability of land;

(6) determining the rate of improvement and cultivation of land;

that such contentions are invalid and unauthorized by any federal law, or any law of California.

IX.

That said Irrigation District Federal Cooperation Law and said contract are unconstitutional and void in the following particulars, among others:

(a) That they purport unconstitutionally to delegate to Congress the power to adopt future legislation governing and prescribing the terms under which such contracts can [fol. 117] be made by California irrigation districts;

(b) That they purport, and in particular Article 32 of said contract purports to delegate to the Secretary of the Interior or the contracting officer the power to veto changes in said District and in the boundaries thereof;

(c) That they purport to delegate to the Secretary of the Interior or the contracting officer the power to make future rules and regulations, governing the matters set forth in paragraph VIII of this second defense;

(d) That they purport to delegate to the Secretary of the Interior and the district power to enlarge or modify the legal authority of the district by the terms of the contract;

(e) That they purport to delegate to the Secretary of Interior and the district the ascertainment of benefits in accordance with which assessments may be made by the District.

X.

The foregoing specifications as to matters wherein said contract is invalid are not intended to be all inclusive, and these answering defendants do not waiver their rights to raise, argue and have determined any and all questions which may exist as to the invalidity of said contract.

Third Defense

As and for a Third Separate and Further Defense to Plaintiff's Complaint, These Answering Defendants Admit, Deny and Allege:

I.

That paragraphs I, II, III, IV, V, VI, VII, VIII and IX [fol. 118] of the first defense herein are hereby referred to and made a part of this third defense, with the same force and effect as if set out herein word for word.

II.

That said complaint does not, nor does any part, section or paragraph thereof, state facts sufficient to constitute a cause of action.

Wherefore, these answering defendants pray that judgment be entered that plaintiff take nothing by its complaint; that a declaration be made of the rights and duties among themselves of the State of California, the United States, plaintiff district and the landowners thereof in respect of said contract; and for all other proper relief.

Fred N. Howser, Attorney General, Arvin B. Shaw, Jr., Assistant Attorney General, Gilbert F. Nelson, Deputy Attorney General, Attorneys for answering defendants.

Verified by Gilbert F. Nelson, November 7, 1950

[fol. 130] In Superior Court of Tulare County

No. 39627

Answer of Defendant Courtney McCracken —Filed November 14, 1950

Comes Now Courtney McCracken, a party in interest, including ownership of land and water and other rights within the Ivanhoe Irrigation District, and without waiving his demurrer to the complaint herefofore filed, makes and files this his answer to the complaint herein of the Ivanhoe Irrigation District and prays this Court for a declaration of rights and duties, and in connection therewith for his first defense admits, denies and alleges as follows:

First Defense:

I.

Admits that in 1948 certain proceedings were had and taken for the formation of an irrigation district to be known as Ivanhoe Irrigation District and that the area involved in said proceedings includes approximately 11,117 acres of land in Tulare County, California. Admits that the Board of Directors of the Ivanhoe Irrigation District and representatives thereof did carry on negotiations with the Bureau of Reclamation of the United States Department of Interior and representatives of said Bureau and Department to procure a dependable supplemental supply of water for the lands within said district and that negotiations were also carried on for the design and construction of a distribution system within said district for the receiving of said supplemental supply of water from a central point on what is referred to as the Friant-Kern Canal [fol. 131] (hereinafter more particularly described and referred to) and distributing said supplemental supply to units of not exceeding 160 acres each to all of the area and acreage within said district deemed irrigable. Admits that several contracts and forms and terms for contracts were urged by said Bureau and Department and that finally the Board of Directors of said Ivanhoe District did accept on behalf of said district the contract and form of contract set forth as Exhibit "A" attached to plaintiff's complaint. Alleges that said contract was so accepted by said district and its representatives as the best and only contract that said Bureau and Department would make. That said contract and its terms were accepted only as the only means of getting a supplemental water supply and because of the belief of a need for water within certain areas of said district. That certain terms and conditions of said contract (hereinafter more particularly referred to) were not sought or requested by said district and were insisted upon by said Bureau and Department and their representatives as a condition of obtaining any water.

Admits that said contract was by action of said Board of Directors submitted to the Districts Securities Commission of the State of California and that said Commission did issue its order in the words and figures as set forth

in Exhibit "C" attached to plaintiff's complaint (as corrected and amended by its letter of July 20, 19[illegible] attached to said Exhibit "C"). Denies, however, that in so doing said Commission gave or intended to give its unqualified approval to said contract and/or its terms and provisions and alleges that said approval was and is conditional in several particulars including, among others, the legality of certain Bureau and Department-required provisions (here-[fol. 132] inafter particularly referred to) being determined by the Courts.

Admits that thereafter said district Board of Directors did cause a proposition in connection with said matter to be submitted to the voters within said district and that the vote counted by said Board was 251 for and 33 against the proposal submitted at said election. Admits that thereafter the district officers and the Regional Director of Region 2 of said Bureau and Department did sign said contract Exhibit "C" attached to said complaint and that thereafter this proceeding was instituted by plaintiff.

Admits that there are approximately 11,117 acres of land within the boundaries of said district and alleges that most all of said acreage is subject to irrigation and cultivation and has been reclaimed and is devoted to farms and crops and is fertile.

Admits that the rainfall in the vicinity of said district is not adequate for all irrigation purposes in said district and that additional water for irrigation and domestic purposes is supplied by pumping from an established and defined underground body of water, and that this pumping is done by the individual landowners from wells on their respective lands within said district. Admits that in years of limited rainfall pumping from said underground body of water causes said underground water supply to lower but alleges that said underground body of water is quickly replenished in periods of normal rainfall in the vicinity in question and that only a limited and periodic supplemental supply of water may be needed within said district and that said distribution system is and will be needed only in limited areas and substantial areas only periodically, if at all.

[fol. 133]

II.

That other than above or hereinafter admitted or alleged each and all of the allegations of paragraphs I through X inclusive of the complaint are denied.

III.

That the defendant Courtney McCracken is now and was at all times herein mentioned and for several years prior thereto has been the owner of 309 acres of land within said district. That this defendant has reclaimed and put into a high state of production substantially all of said acreage. That said defendant's land is supplied with irrigation water by pumping from wells and through pipe lines in a system installed by defendant and from a supply of water owned by defendant served to defendant's land from the canal system of what is known as the Wutchumna Water Co. by virtue of stock ownership of the defendant in said company and from return and seepage flow water from higher lands reaching defendant's land and to which flow defendant is entitled and of which he is the owner by use and right.

IV.

That said defendant's land in said district is described as follows:

The Northwest Quarter of Section 30, Township 17 South, Range 26 East, M.D.B. & M. comprising 152 acres, more or less; and

The Northwest Quarter of Section 25, Township 17, South, Range 25 East, M.D.B. & M. comprising 157 acres, more or less.

That 125 acres of said land is improved to grape vineyard [fol. 134] and young orange orchard; 160 acres of said land is devoted to annual crops, including the raising of vegetables, truck crops and grains; about 24 acres of said land is hillside pasture land, which said land (except said hillside pasture) is well leveled and readily irrigated and is fertile and capable of producing bountiful crops; that

said land has been reclaimed and developed and is being farmed as a unit, and its highest and best use is that of being farmed as a unit.

V.

That defendant protested in writing filed with the Board of Supervisors of said Tulare County against the inclusion of defendant's lands or any part thereof within the district and protested same, and his said lands and all thereof were included over his written protest and objection. That since the organization of the district this defendant has suggested to the Board of Directors of said district that his land be excluded from said district, but has been advised by the members of said Board and believes that they would decline to exclude his land from said district; that it would be futile and useless for defendant to petition for exclusion of his land from said district.

VI.

That defendant has never consented to said contract or the terms thereof and in particular the provisions and effect thereof herein referred to and defendant protested but could not vote against the approval of said contract by the district for the reason that he is not and was not a resident or voter in said district.

VII.

That defendant is the owner of additional lands in other [fol. 135] areas within the Central Valley Project in California, said holdings being as follows:

The North Half of Northwest Quarter of Southwest Quarter and South Half of the Southeast Quarter of Southwest Quarter, and the East Half of Northwest Quarter of Northwest Quarter of Section 33, Township 23 South, Range 26 East, M.D.B. & M. comprising 60 acres, more or less, situate in Delano-Earlimart Irrigation District; and

That portion of Lot 53 of Mountain View Citrus Tract #1 described as: W por bet RR com 251.8 ft E of NE

cor of Sec. 30, E 244.5 ft to W line of RR, S 3° 7' W 140.2 ft; S 5° 13' W 607.5 ft alg R/w to CL line of Co. Rd; Ely N 30° 07' W, 264.3 ft N 3° 42' W 516.24 ft to Beg., comprising 3 acres, more or less, situate in Orange Cove Irrigation District.

VIII.

That defendant has been advised by the Bureau of Reclamation of the United States Department of the Interior that in order to obtain any water from said district under said contract he will be obliged to sell, or authorize the Secretary of the Interior by recordable contract to sell his land in said project exceeding 160 acres, and to designate his land not in excess of 160 acres upon which he desires to obtain water, and without taking such action he will not be delivered any water by the district; that defendant does not desire to sell or authorize anyone to sell his land in excess of 160 acres, nor to designate any 160 acres upon which water shall be delivered as non-excess [fol. 136] land.

IX.

That this defendant is an unmarried man; that he resides near the City of Woodlake, County of Tulare, State of California.

X.

That the contract set forth as Exhibit "A" attached to the complaint and the property of defendant above described and referred to, and the rights and duties of defendant with respect thereto, are directly involved in the determination of the matters and issues hereinbefore set forth and this defendant asks for a declaration of his legal rights and duties in relation thereto and in relation to the other parties to said contract and to this proceeding.

Second Defense:

As and for a Second, Further and Separate Defense to Plaintiff's Complaint, Defendant Admits, Denies and Alleges:

I.

That paragraphs numbered I, II, III, IV, V, VI, VII, VIII, IX and X, inclusive, of his first defense herein are hereby referred to and made a part of this second defense with the same force and effect as if set out herein word for word.

II.

That the contract, a copy of which is attached to the complaint herein and marked "Exhibit A", is illegal, invalid, unauthorized and void; that among the particulars in which the said contract is illegal, invalid, unauthorized and void are the matters hereinafter set out in this second defense.

[fol. 137]

III.

That Sections 23225, 22672 and 22673 of the Water Code of California purporting to authorize this action, are unconsitutional (sic) and void in this: that the period for publication of summons and for appearance of interested parties in such an action is unreasonably short, in view of the character and scope of the action as an in rem action, and the landowners and water users of said district and other interested parties are thereby deprived of property without due process of law and without compensation.

IV.

That among other things, said contract is, in each of the following particulars, unauthorized by any law of the United States:

(a) That said contract purports to be a contract for the sale of water by the United States to plaintiff district; that such a contract is not authorized by any law of the United States;

(b) That said contract is made upon such terms that the cost of construction of works connected with water supply for said district will not be repaid to the United States by said district, or at all, within 40 years; that such a contract is not authorized by any law of the United States;

(c) That said contract, in and by Articles 34, 35 and 36, purports to impose certain land limitations upon said district and the owners of land in said district; that the imposition of such land limitations is not authorized by Acts of the Congress of the United States by which the construction, operation, and maintenance of the Central Valley Project, of which said district is a part, were authorized, [fol. 138] nor by any law of the United States;

(d) That said contract purports to terminate delivery of water by the United States to plaintiff district at the end of 40 years; that such a contract is not authorized by any law of the United States.

V.

That said contract is not authorized by and violates the law of California in the following particulars, among others:

(a) That from time to time plaintiff district will possess surplus water not then necessary for use within the district, and said district will be entitled, under Section 22559 of the Water Code of California, to dispose of such surplus water for use thereof outside plaintiff district; that Article 12(b) of said contract purports to prohibit such disposal without the contracting officers' written consent; that such provision is not authorized by any law of California;

(b) That certain waste, seepage and return flow water derived from water delivered to the district under said contract will escape and be discharged beyond the district's boundaries; that Article 15(c) of said contract pruports (sic) to reserve to the United States rights to such water; that said provision is not authorized by any law of California;

(c) That in the ordinary course of business, plaintiff district will be required to levy assessments upon the lands therein; that Article 26 of said contract prohibits the delivery of water made available pursuant to said contract to any water user of the district unless such assessments are paid, even though such assessments be judicially determined to be irregular or void; that such provision is not [fol. 139] authorized by any law of California;

(d) That Article 27 of said contract permits the levy of assessments by the plaintiff district upon an ad valorem basis; that such levy upon lands denied delivery of water made available pursuant to the contract, under Articles 34, 35 and 36 of said contract, would consitute (sic) a deprivation of property without due process of law and without compensation; that said provision is not authorized by any law of California;

(e) That Article 32 of said contract purports to prohibit any change in the district by partial or total consolidation or merger with another district, without the written consent of the contracting officer; that said provision is not authorized by any law of California;

(f) That said contract contains no statement of the maximum amount of money to be payable to the United States by plaintiff district for construction purposes and cost of water supply and acquisition of property, or any thereof; that it is and was impossible for plaintiff district to provide such a statement, as required by Section 23223 of the Water Code of California, in the notice of the election at which the electors of said district purported to authorize the execution of said contract, which election is alleged in paragraph numbered V of said complaint to have been held in said district; that such a statement was not contained in said notice of election; that such a notice of election is not authorized by any law of California.

VI.

That Chapter 2, Part 6, Division II, of the Water Code of California, designated the "Irrigation District Federal Cooperation Law", does not authorize the execution of said [fol. 140] contract by plaintiff district, and if it were so construed as to authorize the execution of such contract, it would be unconstitutional and void in this:

(a) That said law does not have a uniform operation; and

(b) That said law would be a local or special law in a case where a general law can be made applicable.

VII.

That Section 23195 of the Water Code of California, purporting to authorize irrigation districts to contract with the United States, is unconstitutional and void if interpreted and applied so as to permit such contracts to be made under the terms of Acts of Congress adopted after the year 1917; that the contract herein sought to be validated is not authorized and could not be made under or in accordance with the terms of the Federal Reclamation Act of June 17, 1902, and acts amendatory thereof or supplementary thereto adopted by the Congress prior to the adoption in 1917 by the California Legislature of said Irrigation District Federal Cooperation Law.

VIII.

That said contract would deprive landowners of said district of property without due process of law and without compensation, in the following particulars, among others:

(a) By the land limitation provisions of Articles 34, 35 and 36;

(b) By application of the provisions of Section 5 of the Reclamation Act of June 17, 1902, requiring any such landowner to be an actual bona fide resident upon his land, or occupant thereof residing in the neighborhood of said land;

[fol. 141] (c) By application of the provisions of Section 3 of the Act of Congress, adopted August 9, 1912, requiring excess holdings prohibited by said contract to be forfeited to the United States;

(d) By application of the provisions of Section 10 of said Act of June 17, 1902;

(e) By application of the provisions of Section 15 of the Act of Congress adopted August 4, 1939, and of several intervening acts authorizing the Secretary of the Interior to make rules and regulations respecting the carrying out of the contract, such rules and regulations

not being confined to rules and regulations adopted and existing at the time of the execution of said contract;

(f) That the Secretary of the Interior unlawfully contends that under the provisions of the Federal Reclamation Laws he has the authority to make rules and regulations:

(1) requiring cropping practices approved by him;

(2) regulating and limiting the size of farm units to not less than 10 nor more than 160 acres;

(3) requiring residence of the landowner upon his land, or occupancy thereof by him;

(4) limiting delivery of water to farm units smaller than 160 acres;

(5) determining the irrigability of land;

(6) determining the rate of improvement and cultivation of land;

that such contentions are invalid and unauthorized by any federal law, or any law of California.

[fol. 142] IX.

That said Irrigation District Federal Cooperation Law and said contract are unconstitutional and void in the following particulars, among others:-

(a) That they purport unconstitutionally to delegate to Congress the power to adopt future legislation governing and prescribing the terms under which such contracts can be made by California irrigation districts;

(b) That they purport, and in particular Article 32 of said contract purports to delegate to the Secretary of the Interior or the contracting officer the power to veto changes in said district and in the boundaries thereof;

(c) That they purport to delegate to the Secretary of the Interior or the contracting officer the power to make future rules and regulations, governing the matters set forth in paragraph VIII of this second defense;

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

R. N. PHILPOT
Notary Public in and for said
County and State.

(Notary Seal)

My commission expires
November 25, 1940

[fol. 174] EXHIBIT "C" TO AMENDED ANSWER, ETC.

ASSIGNMENT.

WHEREAS, under and by virtue of the provisions of an Act of the Legislature of the State of California, entitled "An act authorizing the Department of Finance to appropriate waters in connection with the utilization and conservation of the water resources of the state in the development of a general or coordinated plan; authorizing the State Department of Finance to release or assign such appropriations; authorizing the State Department of Finance to request other departments of the state or state officers to furnish services or assistance to make investigations in connection with the development of a general or coordinated plan for the utilization or conservation of the water resources of the State", approved April 29, 1927, being Chapter 286, Statutes of 1927, page 508, the State Department of Finance is directed and authorized, pursuant to the provisions of the Water Commission Act and the rules and regulations of the Division of Water Resources of the Department of Public Works, to make and file an application or applications for any water or the use thereof which in the judgment of the State Department of Finance is or may be required in the development and completion of the whole or any part of a general or coordidnated plan looking towards the development, utilization or conservation of the water resources of the State of California; and

WHEREAS, pursuant to the provisions of the aforesaid act, the State Department of Finance did, on the 30th day of July, nineteen hundred twenty-seven, file with the Divi-

(d) That they purport to delegate to the Secretary of the Interior and the district power to enlarge or modify the legal authority of the district by the terms of the contract;

(e) That they purport to delegate to the Secretary of Interior and the district the ascertainment of benefits in accordance with which assessments may be made by the district.

X.

The foregoing specifications as to matters wherein said contract is invalid are not intended to be all inclusive, and this defendant does not waive his right to raise, argue and [fol. 143] have determined any and all questions which may exist as to the invalidity of said contract.

Third Defense:

As and for a Third Separate and Further Defense to Plaintiff's Complaint, Defendant Admits, Denies and Alleges:

I.

That paragraph I, II, III, IV, V, VI, VII, VIII, IX and X of the first defense herein are hereby referred to and made a part of this third defense with the same force and effect as if set out herein word for word.

II.

That said complaint does not, nor does any part, section or paragraph thereof, state facts sufficient to constitute a cause of action.

Wherefore, this defendant prays that judgment be entered that plaintiff take nothing by its complaint; that a declaration be made of his legal rights and duties and the rights and duties of plaintiff and of the United States in relation to said contract; and for all other proper relief.

W. R. Bailey and Harry W. Horton, by W. R. Bailey, Attorneys for Defendant, Courtney McCracken.

Verified by Courtney McCracken, Nov. 13, 1950.

sion of Water Rights of the Department of Public Works of the State of California, those certain applications for [fol. 175] permits to appropriate unappropriated waters of the San Joaquin River, designated therein as Applications Nos. 5637 and 5638; and

WHEREAS, pursuant to the provisions of the aforesaid act, as amended, the State Department of Finance did, on the 2nd day of August, nineteen hundred thirty-eight, file with the Division of Water Resources of the Department of Public Works of the State of California, that certain application for permit to appropriate unappropriated waters of the San Joaquin River, designated therein as Application No. 9369; and

WHEREAS, the aforesaid Act of April 29, 1927, as amended by the act approved June 12, 1931, being Chapter 720, Statutes of 1931, page 1513; the act approved May 24, 1933, being Chapter 537, Statutes of 1933, page 1425; and the act approved July 15, 1935, being Chapter 462, Statutes of 1935, page 1518, provides, among other things, (a) that notwithstanding anything in said act contained, the State Department of Finance shall have power, in its discretion, to release from priority or to assign any portion of any of the appropriations that may be filed under the provisions thereof when such release or assignment is for the purpose of development not in conflict with any general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State, and (b) that no such priority shall be released, or assignment made of any such appropriation that will, in the judgment of the State Department of Finance, deprive the county in which such appropriated water originates, of any such water necessary for the development of such county; and

WHEREAS, The United States of America is now engaged [fol. 176] in the construction of that certain project known as and designated the Central Valley Project, California, a part of a general or coordinated plan for the development, utilization and conservation of the water resources of the State of California and which project was authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115), and the

[fol. 155] In Superior Court of Tulare County

No. 39627

Amended Answer of Defendant, The People of the State of California, and Answer of the Defendant Water Project Authority of the State of California—Filed March 30, 1951

Comes now the Attorney General of the State of California and appears and answers for the People of the State of California, and for the Water Project Authority of the State of California pursuant to a resolution of said Authority dated March 27, 1951, attached hereto and marked Exhibit "A", and referred to and incorporated in this answer as if set forth at length herein, and alleges in behalf of said defendants as follows:

I.

That the State of California is one of the United States of America; that this answering defendant appears in the sovereign governmental, and proprietary capacities of said State, in its own interest and for the protection of its own rights; also as parens patriae, in the interest of and for the protection of all its citizens, residents, landowners and water users, and its agency, the plaintiff district, and to protect the integrity and proper application of its Constitution and laws respecting water and the use thereof, water rights, contracts, property and property rights; also as trustor of an express trust, hereinafter described which trust relates to the use of water in the Central Valley [fol. 156] Project hereinafter mentioned; also as absolute owner of the corpus of the water to be used in and by said Central Valley Project and as owner of the right of reversion of any rights to the use of such water which may be forfeited or otherwise terminated for non-use or otherwise; and as trustee for the use and benefit of the beneficiaries of the Central Valley Project of the right to apply to beneficial use for irrigation in said Central Valley Project certain waters of the Sacramento and San Joaquin Rivers and streams tributary thereto, which water will be commingled and used for the purposes of said project. That

the Water Project Authority of the State of California is a body politic and corporate organized and existing under the laws of the State of California and appears pursuant to leave of court granted on March 8, 1951.

II.

Allege that Central Valley Project is a multiple-purpose project designed and planned for the general purposes of irrigation of arid lands in the Great Central Valley of California, improvement of navigation, river regulation, flood control, incidental development of hydroelectric power, repulsion of salt water within the delta of the Sacramento and San Joaquin Rivers, and other purposes; that the Great Central Valley of California is the valley which lies in the basin of the Sacramento and San Joaquin Rivers, and their tributaries; that said project contemplates the use in said valley for irrigation, municipal, domestic, power and other beneficial purposes, of the water of the Sacramento and San Joaquin Rivers and their tributaries, that said waters arise, flow and discharge into the Pacific Ocean wholly within the State of California; [fol. 157] that there are no public lands of the United States in said Great Central Valley; that said project was planned and generally designed by the State of California; that the plans, purposes and features of said project are substantially as set out and described in Bulletins Nos. 25, 26 and 29 of the Division of Water Resources, Department of Public Works, of the State of California, which bulletins constitute reports submitted by said division to the California Legislature of 1931 pursuant to acts of said Legislature requiring the preparation and submission of said reports; that said bulletins are hereby referred to and incorporated by reference in this answer.

III.

Allege that by act of its Legislature adopted August 5, 1933 and effective January 13, 1934 (California Statutes 1933, p. 1042) the State of California authorized the construction of the Central Valley Project and created a state agency designated "Water Project Authority of the State

of California," and authorized said Authority to construct, maintain and operate said project and to use therefor the proceeds of sale of certain state bonds authorized by said Act; that following the adoption of said Act it became and was impracticable for the state to sell said bonds and construct the project; that by the Acts of Congress designated the Emergency Relief Appropriation Act of 1935 and the Rivers and Harbors Act of 1935, by executive orders signed by the President September 10, 1935, and November 16, 1935, a finding of feasibility signed by the Secretary of the Interior and approved by the President December 2, 1935, and the Acts of Congress designated the Rivers and Harbors Act of 1937, and the Rivers and Harbors Act of 1940, [fol. 158] and the Act of Congress approved October 14, 1949, Public Law No. 356, 81st Congress, first session, and the Act of Congress approved September 26, 1950, Public Law 839, 81st Congress, second session, the Secretary of the Interior was authorized to construct said Central Valley Project and has undertaken and entered upon the construction of said project; that certain features of said project have been constructed and others are approaching completion of construction.

IV.

Allege that the major engineering features of said project include:

(1) Shasta Dam and reservoir and hydroelectric power plant on the Sacramento River in Shasta County, California, with certain electric transmission lines leading from said power plant, and appurtenances thereof;

(2) Contra Costa Conduit, a canal leading from the Sacramento-San Joaquin delta to the vicinity of Martinez;

(3) Delta Cross-Channel, to conduct water of and from the Sacramento River and its tributaries across said delta to the lower San Joaquin River, together with the Tracy Pumping Plant and the Delta-Mendota Canal, to convey water from said Delta Cross-Channel to the Mendota Pool in the San Joaquin River;

(4) Friant Dam and reservoir on the Upper San Joaquin River near Friant, Fresno County;

(5) Madera Canal, to conduct water stored in Friant reservoir northerly to a point on Chowchilla River;

(6) Friant-Kern Canal, to conduct water stored in Friant [fol. 159] reservoir southerly to a point on Kern River near Bakersfield.

V.

Allege that the contract dated July 27, 1939, between the United States and the San Joaquin and Kings River Canal and Irrigation Company, Incorporated, and other corporations, commonly referred to as the "Exchange Contract," and mentioned in Article 16(d) of the contract, which is sought to be validated in plaintiff's complaint herein, and by the contract dated July 27, 1939, between the United States and Miller & Lux Incorporated and Gravelly Ford Canal Company, corporations doing business in California, and by other comparable contracts, the United States acquired certain appropriate and prescriptive rights, contract rights and estoppels against the exercise by said companies and others of riparian and prescriptive rights, claimed by them to use for irrigation and other purposes, waters of the San Joaquin River and its tributaries, and the United States in said "Exchange Contract" agreed to deliver to the contracting companies, in lieu and in exchange for their rights to the flow of the San Joaquin River, certain waters of the Sacramento River and its tributaries, to be imported to Mendota Pool through and by means of the Delta Cross-Channel, Tracy Pumping Plant and the Delta-Mendota Canal; that the United States entered into all of said contracts herein referred to in order that it might be able to store in Friant Reservoir, free of the claims of any other parties, waters of the San Joaquin River arising above said reservoir and divert the same northerly through the Madera Canal and southerly through the Friant-Kern Canal, for irrigation of lands in the counties extending from Madera to Kern, in general along the easterly side of the San Joaquin Valley floor; that it [fol. 160] is intended and proposed by the contract herein

sought to be validated that the United States shall deliver waters impounded in Friant Reservoir sometimes known as Millerton Lake and convey the same through Friant-Kern Canal for irrigation of the lands in plaintiff district.

VI.

Allege that the State of California, acting through its Department of Finance and Director of Finance, pursuant to certain statutes adopted by the Legislature of California, heretofore filed certain applications with the Division of Water Resources of the Department of Public Works of California for the appropriation of unappropriated waters of the Sacramento and San Joaquin Rivers and their tributaries, for the use and benefit of the Central Valley Project and the owners of lands to be irrigated therefrom; that by assignments, made pursuant to said Statutes, the State of California, acting through its Department of Finance and Director of Finance, assigned to the United States for the use and benefit of said Central Valley Project certain of said applications, to-wit: by assignment dated September 3, 1938, assigned Application No. 5625 to appropriate water of the Sacramento River at Shasta Dam for power purposes, and Application No. 5626 to appropriate water of the Sacramento River at Shasta Dam for irrigation and domestic use, saline and flood control, and navigation purposes, and Application No. 9364 to appropriate water of the Sacramento River at points of diversion located along the Sacramento River from Shasta Dam to the Sacramento-San Joaquin Delta and on the channels of said delta, for irrigation and domestic use, saline and flood control, and navigation purposes, and Application No. 9365 to appropriate water of the Sacramento River at Shasta [fol. 161] Dam for power purposes; and by assignment dated September 30, 1939, assigned Application No. 5637 to appropriate water of the San Joaquin River at Friant Dam for power purposes, and Application No. 5638 to appropriate water of the San Joaquin River at Friant Dam for irrigation, domestic and flood control purposes, and Application No. 9369 to appropriate water of the San Joaquin River at Temperance Flat Dam in Sections 24 and

25, T.10, S.R.21 E.M.D.B.&M. and at Friant Dam for irrigation, domestic and flood control purposes; that a true copy of said assignment dated September 3, 1938, is hereto attached, marked Exhibit "B" and a true copy of said assignment dated September 30, 1939, is hereto attached, marked Exhibit "C" and said copies are by reference made a part hereof."

VII.

Allege that the State of California has not assigned to the United States, nor to anyone, any of the applications to appropriate water on the tributaries of the Sacramento and San Joaquin Rivers, hereinabove mentioned, except as specified in application 9364, referred to in paragraph VI hereof.

VIII.

Allege that by virtue of the terms of said assignments the State of California has become and is the trustor or grantor of an express trust; the United States has become and is the Trustee of that trust; the landowners to acquire rights to the use of water from the works of the Central Valley Project including the landowners of plaintiff district, have become and are the beneficiaries of that trust; that any and all claims or interests of the United States obtained by the contract, mentioned in Article 16(d) of the contract herein sought to be validated, and similar or [fol. 162] comparable contracts, and under the assignments, Exhibits "B" and "C" hereto, are held by the United States as such trustee under said express trust and as a part of a trust fund or res for the use and benefit of the Central Valley Project and the landowners to acquire rights to the use of water from the works of said project, and in particular the landowners of plaintiff district; that the State of California, as trustor or grantor and as parens patriae, is entitled to be heard, among other things, as to all matters relating to the administration and execution of said trust by said trustee and entitled to require that the trustee administer said trust according to its true intent and meaning.

IX.

Allege that said Central Valley Project will provide a stabilized source of supplemental water supply for irrigation and other purposes for many hundreds of thousands of acres of land now under cultivation and irrigation in the Great Central Valley of California; that the construction, operation and maintenace (sic) of said Central Valley Project will profoundly affect the economy and welfare of the people of at least 21 of the 58 counties of California, embracing more than half of the cultivated agricultural lands of the State; that twenty or more contracts between the United States of America and irrigation and water districts organized under California law, generally comparable in character to the contract herein sought to be validated, have been or will in the near future be executed and submitted to the courts of California for validation in actions similar to the case at bar; that questions of law and fact identical with or similar to those involved in the [fol. 163] case at bar will be presented in said future validation actions; that the original cost estimate of the Bureau of Reclamation, made in 1936, for the construction of said Central Valley Project was $170,000,000; that the last official estimate disclosed by the Bureau of Reclamation for the cost of construction of said Project, made in January, 1950, was $581,886,000; that said last estimate is believed to include the cost of the American River Development which was added to said project by Act of Congress adopted October 14, 1949, but does not include the cost of the Sacramento Valley Canals added to said project by Act of Congress adopted September 26, 1950; that the estimate of cost of said Sacramento Valley canals made by the Bureau of Reclamation in May, 1949, was from $40,000,000 to $65,000,000; that said Secretary and said Bureau of Reclamation seek and have, by official report to Congress, recommended the expansion of said Central Valley Project to include units and features in addition to those now authorized for construction by the Congress, which said Bureau estimates will cost in excess of $3,000,000,000; that said expanded Central Valley Project is generally described and outlined in the report of said Bureau entitled "Central Valley Basin," being Senate Document 113,

Eighty-first Congress, first session, to which reference is hereby made; that the construction, operation and maintenance of said expanded Central Valley Project would profoundly affect the economy and welfare of the owners of several million acres of land, now irrigated or unirrigated, in the Great Central Valley of California, and of several millions of the citizens, residents, landowners and water-users of the State.

[fol. 164] X.

Allege that the United States is one of the parties defendant described in the caption of plaintiff's complaint and in paragraph II of said complaint, and is a party to this action.

XI.

Allege that the validity of the contract marked Exhibit "A" to the complaint does not depend on whether the United States has rights to the water to be delivered by it pursuant to the contract or rights to the use thereof or title or ownership thereto; and further that an adjudication of such rights to water or the use thereof or title or ownership thereto is not appropriate in this proceeding, and that such an adjudication herein would be contrary to the best interests of the State and of the United States; and further, there are appended hereto true copies of correspondence between the Secretary of the Interior of the United States and the Attorney General of the State of California consisting of three letters as follows: letter dated March 5, 1951, signed by Oscar L. Chapman as Secretary of Interior, marked Exhibit "D"; letter dated March 22, 1951, signed by Edmund G. Brown, as Attorney General, marked Exhibit "E"; letter dated March 27, 1951, signed by Oscar L. Chapman as aforesaid and marked Exhibit "F". That aforesaid Exhibits are hereby referred to and incorporated in this answer as if set forth at length herein.

Wherefore, the State of California prays as follows:

(1) that the district's legal capacity and authority to enter into the contract, the proceedings on the part of the dis-

trict for the authorization of the execution of the contract, and the execution of the contract between the Ivanhoe [fol. 165] Irrigation District and the United States be confirmed and declared valid; and (2) that the decree in this proceeding recite that on the issues properly raised in this proceeding the decree is not required to and does not purport to be an adjudication of the right or interest of the State of California or of its agencies, including but not limited to the Ivahoe Irrigation District and the Water Project Authority, or of the right or interest of the United States or its agencies, or all or any of the above, in or to the waters or water rights or respecting the regulation of the use thereof under the laws of the State of California, involved inthe (sic) Central Valley Project.

And Wherefore, the Water Project Authority which is not taking any position on the validity of the contract between the Ivanhoe Irrigation District and the United States, prays that the decree in this proceeding recite that on the issues properly raised in this proceeding the decree is not required to and does not purport to be an adjudication of the right or interest of the State of California or of its agencies including but not limited to the Ivanhoe Irrigation District and the Water Project Authority, or of the right or interest of the United States or its agencies, or any or all of the above, in or to the waters or water rights or respecting the regulation of the use thereof under the laws of the State of California, involved in the Central Valley Project.

Edmund G. Brown, Attorney General, State of California, B. Abbott Goldberg, Deputy Attorney General, Attorneys for People of the State of California and for the Water Project Authority of the State of California.

[fol. 166] EXHIBIT "A" TO AMENDED ANSWER, ETC.

WATER PROJECT AUTHORITY OF THE STATE OF CALIFORNIA
PUBLIC WORKS BUILDING
TWELFTH AND N STREETS
SACRAMENTO, CALIFORNIA

CHAS. G. JOHNSON
STATE TREASURER

THOMAS H. KUCHEL
STATE CONTROLLER

C. H. PURCELL
DIRECTOR OF PUBLIC WORKS
CHAIRMAN

JAMES S. DEAN
DIRECTOR OF FINANCE

EDMUND G. BROWN
ATTORNEY GENERAL

A. D. EDMONSTON
STATE ENGINEER
EXECUTIVE OFFICER

Address All Communications to Executive Officer.

Resolution Adopted by the Water Project Authority at Regular Meeting held on March 27, 1951.

WHEREAS, there is now pending in the Superior Court of the State of California in and for the County of Tulare, a proceeding entitled "Ivanhoe Irrigation District vs. All Parties and Persons, Etc.,", said proceeding being numbered 39627 in said Superior Court for the purpose of validating a contract entered into between said District and the United States for the delivery of water and construction of distribution facilities; and

WHEREAS, by order of said Court in said proceeding dated [fol. 167] March 8, 1951, a default of all persons, excepting those who had filed appearances in said proceeding, was set aside so far as the Water Project Authority of the State of California was concerned, said order granting this Authority the opportunity of appearing in said proceeding if it be so disposed; and

WHEREAS, in said proceeding contentions have been made to the effect (1) that the title to the water proposed to be delivered to the Ivanhoe Irrigation District by the United States, acting by and through the Bureau of Reclamation of the Department of the Interior, and the right of the State to require compliance with State law with reference

to the obtaining of proper permits to appropriate said water and the rights of the State to impose and enforce conditions respecting methods of diversion and use of said water, all as provided by State law, are necessarily involved in the proceeding now pending; and (2) that a validation of the contract before the Court might supersede or impair the powers of the State with regard to the matters above mentioned; and

WHEREAS, the Attorney General of the State of California has expressed himself to this Authority that in his opinion a validation of the contract involved in the proceeding would have no effect whatever upon the title to the water proposed to be delivered to said District or to any other water acquired or to be acquired for purposes of the Central Valley Project or upon any other of the matters above mentioned, and that said matters are not in any way involved in said proceeding; and that it is his intention to file in said proceeding an additional amendment to the answer therein specifically alleging and asserting the contentions involved in the aforesaid opinion, and [fol. 168] requesting that the Court shall include in any final decree rendered in the said proceeding a clear and specific statement that the matters above mentioned are not therein involved and are not passed upon therein; and

WHEREAS, the Attorney General has received letters dated March 5 and March 27, 1951, from Honorable Oscar L. Chapman, present Secretary of the Interior of the United States, expressing a like view, copies of said letters having been furnished to this Authority and included in its files; and

WHEREAS, any doubt as to whether the matters herein specified are involved in said proceeding can and should be resolved by specific declaration of the Court in any decree rendered therein that such matters are not involved and are not passed upon, or determined.

NOW, THEREFORE, BE IT RESOLVED BY THIS AUTHORITY that the Attorney General be and he is hereby requested on behalf of this Authority to take such action as may be appropriate in the premises to protect the interests of

the State of California and of this Authority by making every possible effort to the end that any final decree rendered in the above mentioned proceeding shall clearly and specifically state that the matters above mentioned are not involved in said proceeding and are not passed upon therein.

[fol. 169] EXHIBIT "B" TO AMENDED ANSWER, ETC.

ASSIGNMENT

WHEREAS, under and by virtue of the provisions of an Act of the Legislature of the State of California, entitled "An act authorizing the Department of Finance to appropriate waters in connection with the utilization and conservation of the water resources of the state in the development of a general or coordinated plan; authorizing the State Department of Finance to release or assign such appropriations; authorizing the State Department of Finance to request other departments of the state or state officers to furnish services or assistance to make investigations in connection with the development of a general or coordinated plan for the utilization or conservation of the water resources of the State", approved April 29, 1927, being Chapter 286, Statutes of 1927, page 508, the State Department of Finance is directed and authorized, pursuant to the provisions of the Water Commission Act and the rules and regulations of the Division of Water Resources of the Department of Public Works, to make and file an application or applications for any water or the use thereof which in the judgment of the State Department of Finance is or may be required in the development and completion of the whole or any part of a general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State of California; and

WHEREAS, pursuant to the provisions of the aforesaid act, the State Department of Finance did, on the 30th day of July, nineteen hundred twenty-seven, file with the Division of Water Rights of the Department of Public Works of the State of California, those certain applications

[fol. 170] for permits to appropriate unappropriated waters of the Sacramento River, designated therein as Application Nos. 5625 and 5626; and

WHEREAS, pursuant to the provisions of the aforesaid act, as amended, the State Department of Finance did, on the 2nd day of August, nineteen hundred thirty-eight, file with the Division of Water Resources of the Department of Public Works of the State of California, those certain applications for permits to appropriate unappropriated waters of the Sacramento River, designated therein as Applications Nos. 9364 and 9365; and

WHEREAS, the aforesaid Act of April 29, 1927, as amended by the act approved June 12, 1931, being Chapter 720, Statutes of 1931, page 1513; the act approved May 24, 1933, being Chapter 537, Statutes of 1933, page 1425; and the act approved July 15, 1935, being Chapter 462, Statutes of 1935, page 1518, provides, among other things, (a) that notwithstanding anything in said act contained, the State Department of Finance shall have power, in its discretion, to release from priority or to assign any portion of any of the appropriations that may be filed under the provisions thereof when such release or assignment is for the purpose of development not in conflict with any general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State, and (b) that no such priority shall be released, or assignment made of any such appropriation that will, in the judgment of the State Department of Finance, deprive the county in which such appropriated water originates, of any such water necessary for the development of such county; and

WHEREAS, The United States of America is now engaged [fol. 171] in the construction of that certain project known as and designated the Central Valley Project, California, a part of a general or coordinated plan for the development, utilization and conservation of the water resources of the State of California and which project was authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115), and the First Deficiency Appropriation Act, fiscal year 1936 (49

Stat. 1622), and reauthorized by Act of Congress approved August 26, 1937 (50 Stat. 844), and has requested the State Department of Finance to assign to the United States for the use and benefit of said project all right, title and interest in and to the said Applications Nos. 5625, 5626, 9364 and 9365, and such appropriations of the waters of said river as were made thereby, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder:

NOW, THEREFORE, in pursuance of the discretion and judgment vested in it by the aforesaid Act of April 29, 1927, as amended the State Department of Finance, being fully advised in the premises, does hereby find and determine (a) that the assignment to the United States, in the form and substance hereinafter made, of the aforesaid applications Nos. 5625, 5626, 9364 and 9365, and such appropriations of the water of said river as were made thereby, and all right, title and interest therein and thereto, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder for the use and benefit of said Central Valley Project, California, is for a purpose of development not in conflict with any general or coordinated plan looking towards the development, utilization or conservation of the water resources [fol. 172] of the State of California, but is in furtherance thereof, and (b) that said assignment, in the form and substance hereinafter made, of the aforesaid applications will not, in the judgment of the State Department of Finance, deprive any county in which such appropriated water originates, of any such water necessary for the development of such county; and

The State Department of Finance, in consideration of the foregoing and of the general benefits to accrue to the State of California from the construction by The United States of America of the Central Valley Project, California, established and authorized as aforesaid, does hereby transfer, assign and set over to The United States of America, and its assigns, for the use and benefit of said Central Valley Project, California, all its right, title and interest in and to the aforesaid applications Nos. 5625,

5626, 9364 and 9365, and such appropriations of the water of said river as were made thereby, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder, subject to depletion of the stream flow above Shasta (formerly Kennett) Dam by the exercise of lawful rights to the use of water for the purpose of development of the counties in which such water originates, whether such rights have been heretofore or may be hereafter initiated or acquired, such depletion not to exceed in the aggregate four million five hundred thousand (4,500,000) acre-feet of water in any consecutive ten-year period, and not to exceed a maximum depletion in any one year in excess of seven hundred thousand (700,000) acre-feet.

IN WITNESS WHEREOF, the Department of Finance of the State of California, acting by and through the Director of Finance, has caused this assignment to be executed [fol. 173] this 3rd day of September, A. D. nineteeen hundred thirty-eight.

DEPARTMENT OF FINANCE OF THE STATE OF CALIFORNIA

By ARLIN E. STOCKBURGER
Director of Finance.

(Seal)

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss.

On this 3rd day of September, A. D. nineteen hundred thirty-eight, before me, R. N. Philpot, a Notary Public in and for the said County and State, personally appeared Arlin E. Stockburger, Director of Finance of the State of California, known to me to be the Director of Finance of the State of California, the Department of the State of California that executed the within instrument, known to me to be the person who executed the within instrument, on behalf of the Department of Finance of the State of California, and acknowledged to me that such Department executed the same.

First Deficiency Appropriation Act, fiscal year 1936 (49 Stat. 1622), and reauthorized by Act of Congress approved August 26, 1937 (50 Stat. 844), and has requested the State of Department of Finance to assign to the United States for the use and benefit of said project all right, title and interest in and to the said Applications Nos. 5637, 5638 and 9369, and such appropriations of the waters of said river as were made thereby and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder;

Now, Therefore, in pursuance of the discretion and judgment vested in it by the aforesaid act of April 29, 1927, as amended, the State Department of Finance, being fully advised in the premises, does hereby find and determine (a) that the assignment to the United States, in the form and substance hereinafter made, of the aforesaid Applications Nos. 5637, 5638 and 9369, and such appropriations of the water of said river as were made thereby, and all right, title and interest therein and thereto, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder for the use and benefit of said Central Valley Project, California, is for a purpose of development not in conflict with any general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State of California, but is in furtherance [fol. 177] thereof, and (b) that said assignment, in the form and substance hereinafter made, of the aforesaid applications will not, in the judgment of the State Department of Finance, deprive any county in which such appropriated water originates, of any such water necessary for the development of such county; and

The State Department of Finance, in consideration of the foregoing and of the general benefits to accrue to the State of California from the construction by The United States of America of the Central Valley Project, California, established and authorized as aforesaid, does hereby transfer, assign and set over to the United State of America, to be exercised by and through its Bureau of Reclamation, for the use and benefit of said Central Valley

Project, California, all its right, title and interest in and to the aforesaid Applications Nos. 5637, 5638 and 9369, and such appropriations of the water of said river as were made thereby, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder.

IN WITNESS WHEREOF, the Department of Finance of the State of California, acting by and through the Director of Finance, has caused this assignment to be executed this 30th day of September, A. D., nineteen hundred thirty-nine.

DEPARTMENT OF FINANCE OF THE STATE OF CALIFORNIA,

PHIL S. GIBSON
Director of Finance

By: George Killion
GEORGE KILLION, Deputy

[fol. 178] ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss.

On this 30th day of September, A. D., nineteen hundred thirty-nine, before me, LOIS K. DAUBE a Notary Public in and for the said County and State, personally appeared George Killion, Deputy Director of Finance of the State of California, known to me to be the Deputy Director of Finance of the State of California, the Department of the State of California that executed the within instrument, known to me to be the person who executed the within instrument, on behalf of the Department of Finance of the State of California, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

LOIS K. DAUBE
Notary Public in and for said
County and State

My commission expires
July 16, 1942

State of California)
)
Department of Public Works) ss.
)
Division of Water Resources)

Certificate 4555
Application .....
Permit .....
License .....

I, Timothy C. Cronin, Certification Clerk of the Division of Water Resources, Department of Public Works, State of California, do hereby certify that I have carefully compared the photostatic copy of assignment to which this certificate is attached, with the original of said assignment [fol. 179] in the records of the Division of Water Resources, Department of Public Works, State of California and that the same is a true, full, complete and correct copy of the original thereof on file in this office.

Witness my hand and seal of the Department of Public Works State of California, this 13th day of October, 1950.

Timothy C. Cronin
Certification Clerk, Division of
Water Resources.

[fol. 180] Exhibit "D" to Amended Answer, etc.

United States
Department of the Interior
Office of the Secretary
Washington 25, D. C.

March 5, 1951

Air Mail

My dear General Brown:

I am glad to be able to give you my views on certain questions which you have conveyed to me orally through Chief Deputy Attorney General Levit concerning the effect of validation proceedings under California law upon the resolution of water rights questions under State and Federal law.

I have discussed these questions with our attorneys and, as we understand them, we are in accord with your views. As I understand it, the purpose and effect of a validation proceeding, which is required by Federal statute and permitted under the California statutes, is merely to obtain a judicial decree confirming the authority of the district to enter into the particular contract with the United States and thereby confirming the validity of the contract, just as in the case of a bond validation proceeding. Questions with respect to the historical, present, and future ownership of water or water rights would seem to me to be immaterial to the question whether a particular contract for water service or for the construction of a distribution system, or both, is a valid one and to the question of the authority of the district to enter into it. In short, I do not understand that a finding that the contractual obligations are [fol. 181] valid is determinative of the title to the water.

If this is true, then it follows that any controversy with respect to whether "ownership" of the water which the United States contracts to furnish to the district is in the United States, the State, or elsewhere (a controversy which to me would seem to be wholly unnecessary as a practical matter in any event) would not appear to be for resolution in a proceeding for the validation of a contract.

Furthermore, the resolution of the question whether an individual water user or a district may have a legal right to demand the continued delivry of project water *after* the expiration of the 40-year term of a water service contract clearly is not affected by a finding that the contract itself is binding *during* its own express term.

As for rights to the use of water which have already vested and which are recognized under State law, it is elementary that they cannot be adversely affected by the operations of the United States without just compensation.

These views, I am informed, were expressly stated by counsel for the Bureau of Reclamation during oral argument on the demurrer to the complaint in the Ivanhoe Irrigation District proceeding, in which they appeared as amici curiae.

I hope that I have adequately responded to your inquiry and I and Washington and Sacramento representatives of

the Bureau of Reclamation will be glad to cooperate with you in any further way we can.

[fol. 182] Sincerely Yours,

(Sgd) Oscar L. Chapman
Secretary of the Interior

Hon. Edmund G. Brown
Attorney General of California
State Building
San Francisco, California

Copy to: Regional Director, Sacramento, Calif.
Regional Counsel, Sacramento, Calif.

[fol. 183] Exhibit "E" to Amended Answer, etc.

State of California

Edmund G. Brown
Attorney General

Bert W. Levit
Chief Deputy Attorney General

H. H. Linney
Chief Assistant Attorney General
Division of Civil Law

Arthur H. Sherry
Chief Assistant Attorney General
Division of Criminal Law and Enforcement.

Department of Justice
Office of the Attorney General

March 22, 1951

Honorable Oscar L. Chapman
Secretary of the Interior
United States Dept. of the Interior
Washington 25, D.C.

Dear Mr. Secretary:

I have not yet had an opportunity to acknowledge your letter of March 5, relative to the pending validation suits, and do so now.

Your letter correctly states my views with respect to the purpose and effect of these proceedings, and I am glad to note that you concur. However, I should appreciate a further expression from you concerning the scope and effect of the contracts themselves, which, of course, are the basis [fol. 184] of the validation proceedings; and in particular, I refer to the so-called water service and distribution system contract between the United States and the Ivanhoe Irrigation District which is now before the Superior Court of Tulare County for validation.

It is my view that this contract is not intended to and does not deal with, determine, or settle any questions with respect to the historical, present or future claims of ownership of water or water rights that are now or that may hereafter be urged by the United States, the State of California, the Ivanhoe Irrigation District, or individual or corporate landowners or users of the water, the furnishing of which is provided for by the said contract.

Statement of your views on this additional matter will be appreciated. It is understood, of course, that the contract, if confirmed, will itself obligate the United States to furnish and entitle the District and the landowners to receive certain quantities of water in the circumstances and upon the terms and conditions therein recited, and nothing stated in this letter (or concurred in by you, if you do concur,) is meant to disparage, limit, or modify in any way any of the provisions contained in the said contract.

Yours very truly,

EDMUND G. BROWN
ATTORNEY GENERAL

EGB:AS

[fol. 185] EXHIBIT "F" TO AMENDED ANSWER, ETC.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
Washington 25, D. C.

March 27, 1951

My dear General Brown:

In your letter of March 22 you have expressed certain views concerning the scope and effect of the water service and distribution system contract between the United States and the Ivanhoe Irrigation District, for which a validation proceeding is now pending in the Superior Court of California in and for the County of Tulare, and you have requested my opinion on the accuracy of those views.

I am in agreement with what I understand to be your views, and, for reasons which will be set forth, I do not regard either the validation proceeding or the contract itself as affecting the ownership of water or water rights.

As you know, the Central Valley Project supply from which the Bureau of Reclamation will furnish irrigation and municipal water to contracting entities is derived from two sources: (1) certain applications for appropriations filed with the California Division of Water Resources by the State Director of Finance and assigned by him to the United States pursuant to section 10504 of the California Water Code, as well as certain applications for appropriations which have been filed directly by the United States with the State Division of Water Resources, pursuant to section 8 of the Reclamation Act of 1902, and (2) [fol. 186] contracts with and deeds from a large number of individuals and corporations, by which the United States has acquired rights with respect to the water of the San Joaquin River. Principal in the latter category is the so-called purchase and exchange contract with Miller and Lux, Inc.

The United States, in turn, under the authority of section 9(e) of the Reclamation Project Act of 1939, is entering into contracts with districts organized under California law by which it agrees to furnish certain amounts of

project water to the districts for a period of 40 years on certain conditions and at defined rates. I cannot conceive that these contracts in any way raise, involve, or resolve any questions with respect to the ownership of water or water rights. When the contracts have been decreed to be valid and binding the districts have enforceable rights to demand that certain quantities of water be furnished to them by the United States in accordance with the terms of the contracts, and the United States has enforceable rights to collect payments from the districts in accordance with the terms of the contracts.

More specifically, it is the view of the Department that the position of an irrigation district or a landowner in the Central Valley Project with respect to the ownership of water or water rights is no different from what it would have been had the State of California pursued its original plan to construct and operate the Central Valley Project through the State's Water Project Authority, and to deliver water to the districts under the form of long-term contract then proposed. As I already have pointed out, the sources of the project water supply are in transactions which took place pursuant to and in accordance with the law of California.

[fol. 187]

Sincerely yours,

(Sgd.) OSCAR L. CHAPMAN
Secretary of the Interior.

Hon. Edmund G. Brown
Attorney General of California
State Building
San Francisco, California

Air Mail

[fol. 192] In Superior Court of Tulare County

No. 39627

Answer of Defendant, the State Engineer and Chief of the Division of Water Resources, Department of Public Works of the State of California—Filed June 26, 1952

Comes now A. D. Edmonston, as the State Engineer and Chief of the Division of Water Resources of the Department of Public Works of the State of California and appears and answers the complaint of the plaintiff herein and alleges as follows:

I.

That the defendant, A. D. Edmonston, is the duly appointed, qualified and acting State Engineer and Chief of the Division of Water Resources, Department of Public Works, of the State of California.

II.

That the duties, powers, and jurisdiction vested in the Department of Public Works of the State of California in and by the Water Code of the State of California, and in particular in and by Division II thereof are administered and exercised by and through the State Engineer.

III.

That this answering defendant is appearing herein pursuant to leave of court granted on the 17th day of April, 1952, to appear and take all appropriate action in this proceeding. That this answering defendant's authority and responsibilities are derived in part from and based upon [fol. 193] Article XIV, Section 3, of the Constitution of the State of California as expressly declared and set forth in and by Section 1 of the Water Commission Act of the State of California, Statutes of 1913, Chapter 586, as amended by Statutes of 1939, Chapter 838, the first two paragraphs whereof are now codified as Section 100 and Section 275 of the Water Code of the State of California, as amended.

IV.

That, as declared in Section 102 of the Water Code, all water within the State is the property of the people of the State but the right to the use thereof can be acquired by appropriation only upon compliance with the provisions of Division II of said Water Code of the State of California.

V.

That the central Valley Project is a multiple-purpose project designed, planned and functioning for the general purposes of irrigation of arid lands in the Great Central Valley of California, and other purposes; that the Great Central Valley of California is the valley which lies in the basin of the Sacramento and San Joaquin rivers, and their tributaries; that said project contemplates the use in said valley for irrigation, municipal, domestic, power and other beneficial purposes, of the water of the Sacramento and San Joaquin rivers and their tributaries, that said waters rise, flow and discharge into the Pacific Ocean wholly within the State of California; that there are no irrigable public lands of the United States within the service area of said Central Valley Project in said Great Central Valley; that said project was planned and generally designed by the State of California; that the plans, [fol. 194] purposes and features of said project are substantially as set forth and described in Bulletins Nos. 25, 26 and 29 of the Division of Water Resources, Department of Public Works, of the State of California, which bulletins constitute reports submitted by said division to the California Legislature of 1931 pursuant to acts of said Legislature requiring the preparation and submission of said reports; that said bulletins and the reports contained therein are official documents of the executive department of the State of California and contain evidence material and relevant to this proceeding which the Court is required by law to judicially notice.

VI.

That said Central Valley Project was primarily designed to provide, and does and will provide a stabilizing source

of supplemental water supply for irrigation, and other purposes incidental thereto, on a vast acreage of lands now under irrigation, in the Great Central Valley of California, which lands without such supplemental water supply would have inadequate sources of supply; that the construction, operation, maintenance and management of said Central Valley Project will profoundly affect the economy and welfare of the people of at least 21 of the 58 counties of California, embracing several million acres of land comprising more than half of the cultivated agricultural lands of the State.

VII.

That the major engineering features of said project include:

(1) Shasta Dam and reservoir and hydroelectric power plant and Keswick Dam and power plant on the Sacramento River in Shasta County, California, with certain electric transmission lines leading from said power plants, and appurtenances thereto;

[fol. 195] (2) Delta Cross-Channel, to conduct water of and from the Sacramento River and its tributaries across the said delta to the lower San Joaquin River, together with the Tracy Pumping Plant and the Delta-Mendota Canal, to convey water from said delta to the Mendota Pool on the San Joaquin River;

(3) Contra Costa Canal, a canal leading from the Sacramento-San Joaquin delta to the vicinity of Martinez;

(4) Friant Dam and reservoir on the upper San Joaquin River near Friant, Fresno County;

(5) Madera Canal, to conduct water stored in Friant Reservoir northerly to a point on Chowchilla River;

(6) Friant-Kern Canal, to conduct water stored in Friant Reservoir southerly to a point on Kern River near Bakersfield;

(7) Folsom Dam and reservoir and hydroelectric power plant on the American River near the City of Folsom,

with certain electric transmission lines leading from said power plant, and appurtenances thereto, and related works.

VIII.

That the Secretary of the Interior of the United States, by and through its Bureau of Reclamation, was authorized to construct the Central Valley Project in and by acts of Congress designated the Rivers and Harbors Act of 1937, the Rivers and Harbors Act of 1940, and the Act of Congress approved October 14, 1949, and Act of Congress approved September 26, 1950, and to operate and maintain the same and in particular to execute repayment contracts in order to recover to the United States Treasury the reimbursable cost of the project allocated to irrigation [fol. 196] and assigned for return by the water users in accordance with the provisions of the Federal reclamation laws, as amended.

That the United States acting through the Secretary of the Interior and its Bureau of Reclamation, has substantially completed construction of such project (with exception of that portion thereof set forth in subsection (7) of paragraph VII hereof), and is now operating and maintaining the usable completed works of said project, and is required so to do, pursuant to said Federal reclamation laws.

IX.

That by contract dated July 27, 1939, between the United States and the San Joaquin & Kings River Canal & Irrigation Company, Incorporated, and other corporations, commonly referred to as the "Exchange Contract", and mentioned in Article 16 (d) of the contract which is sought to be validated in plaintiff's complaint herein, and by the contract dated July 27, 1939, between the United States and Miller & Lux Incorporated and Gravelly Ford Canal Company, corporations doing business in California, and by other comparable contracts, the United States acquired certain appropriative and prescriptive rights, contract rights and estoppels against the exercise by said companies and others of riparian and prescriptive rights, claimed by

them for use for irrigation and other purposes, in and to the water of the San Joaquin River and its tributaries, and the United States in said "Exchange Contract" agreed to deliver to the contracting companies, in lieu and in exchange for their rights to the flow of the San Joaquin River, certain waters of the Sacramento River and its tributaries, to be imported to Mendota Pool through and by means of the Delta Cross-Channel, Tracy Pumping [fol. 197] Plant and the Delta-Mendota Canal; that the United States entered into all of said contracts herein referred to in order that it might be able to store in Friant Reservoir, free of the claims of any other parties, waters of the San Joaquin River rising above said reservoir and to divert the same northerly through the Madera Canal and southerly through the Friant-Kern Canal, for irrigation of lands in the counties extending from Madera to Kern, in general along the easterly side of the San Joaquin Valley floor; that it is intended and proposed by the contract herein sought to be validated that the United States shall deliver waters impounded in Friant Reservoir sometimes known as Millerton Lake and convey the same through Friant-Kern Canal for irrigation of lands in plaintiff district.

X.

That the State of California, acting through its Department of Finance and Director of Finance, pursuant to certain statutes adopted by the Legislature of California, prior to the filing of this proceeding filed certain applications with the State Engineer and Chief of the Division of Water Resources of the Department of Public Works of the State of California for the appropriation of unappropriated waters of the Sacramento and San Joaquin rivers and their tributaries, for the use and benefit of the Central Valley Project and the owners of lands to be irrigated therefrom; that by assignments, made pursuant to said statutes, the State of California, acting through its Department of Finance and Director of Finance, assigned to the United States for the use and benefit of said Central Valley Project certain of said applications, to-wit: by assignment dated September 3, 1938, assigned Appli-

cation No. 5625 to appropriate water of the Sacramento River at Shasta Dam for power purposes, and Application [fol. 198] No. 5626 to appropriate water of the Sacramento River at Shasta Dam for irrigation and domestic use, saline and flood control, and navigation purposes, and Application No. 9364 to appropriate water of the Sacramento River at points of diversion located along the Sacramento River from Shasta Dam to the Sacramento-San Joaquin Delta and on the channels of said delta, for irrigation and domestic use, saline and flood control, and navigation purposes, and Application No. 9365 to appropriate water of the Sacramento River at Shasta Dam for power purposes; and by assignment dated September 30, 1939, assigned Application No. 5637 to appropriate water of the San Joaquin River at Friant Dam for power purposes, and Application No. 5638 to appropriate water of the San Joaquin River at Friant Dam for irrigation, domestic and flood control purposes, and Application No. 9369 to appropriate water of the San Joaquin River at Temperance Flat Dam in Sections 24 and 25, T. 10 S., R. 21 E., M.D.B. & M., and at Friant Dam for irrigation, domestic use and flood control purposes; that said assignments and said applications so assigned constitute official acts of the executive branch of the State of California which this Court is required by law to judicially notice.

XI.

That by virtue of the terms of said assignments the State of California has become and is the trustor of an express trust; the United States has become and is the trustee of that trust; the landowners, including the landowners of plaintiff district, have become and are the beneficiaries of that trust; that any and all claims or interests of the United States obtained by the contract, mentioned in Article 16 (d) of the contract herein sought to be validated, and similar or comparable contracts, and by the [fol. 199] assignments to which reference is made in Paragraph X hereof, are held by the United States as such trustee under said express trust and as a part of the trust fund or res for the use and benefit of the plaintiff district

as the representative of the landowners therein, in order to, among other things, preserve to such landowners the right to acquire permanment (sic) rights to the use of water from the works of said project pursuant to the laws of the State of California and of the United States; that the United States has not and will not own or have any right of ownership or title to any water of the State acquired or to be acquired for purposes of said project other than as such trustee; that unless such status and relationships are recognized to exist and are protected by this Court in its decision herein, the effect of said contract, if it be validated, will be to create uncertainty and doubt as to those matters and will thereby cast doubt upon the authority and jurisdiction of this answering defendant to discharge his responsibilities under California law.

XII.

That the Secretary of the Interior in constructing, operating, and maintaining said project is under mandate from the Congress of the United States pursuant to Section 8 of the Reclamation Act of June 17, 1902, to acquire any and all rights to the use of water required for project purposes pursuant to the laws of the State of California relating thereto, and in operating said project to proceed in all respects in accordance with the laws of the State of California relating to the control, appropriation, use or distribution of water for irrigation; that the United States has acquired, and is proceeding to acquire appropriative [fol. 200] and other rights of various characters to the use of water for purposes of said project, all solely as such trustee, and in delivering said water is required to do so solely as a carrier and distributor of such water to the beneficiaries of such trusts.

XIII.

That an adjudication of rights to the use of water to be delivered through the works of the Central Valley Project to the plaintiff district is not properly within the scope of the issues in this proceeding.

XIV.

That it is the expressed plan and objective of the Secretary of the Interior that the use of water throughout said Central Valley Project shall be governed exclusively by contracts pursuant to Section 9(e) of the Act of Congress designated the Reclamation Project Act of 1939, which contracts are and will be generally similar or comparable to that portion of the contract herein sought to be validated relating to delivery of water; that 20 or more such contracts between the United States of America and irrigation and other types of water districts organized under California law, generally comparable in character to the contract herein sought to be validated, have been or will in the near future be executed and submitted to the courts of California for validation in actions similar to the case at bar; that considerations of law and facts identical with or similar to those involved in the case at bar will be presented in said future validation actions.

XV.

That the said contract sought to be validated in this pro- [fol. 201] ceeding does not provide for, nor recognize the right to acquire a perpetual and appurtenant right to the use of water on the part of the plaintiff district and its landowners nor any right therein or thereto beyond the term of forty years as specified in said contract; that said contract does not, by its terms, and will not enable the district to secure any right to the use of said water to be delivered to it by the United States and applied to beneficial use by its landowners, beyond the term of years specified in said contract; that said contract does not provide specifically for any credit to the district of any construction cost component in the rates provided to be paid by the district to the United States for said water so to be delivered; that said contract is not a repayment contract providing for the return to the United States treasury of the proportion of the construction cost obligation of said Central Valley Project allocated to irrigation and assigned for return by the said district, as provided for by the Federal reclamation laws; that the said

contract sought to be validated herein may nevertheless be validated in this proceeding if construed as a temporary or interim contract upon the grounds that at the present time it may not be feasible or possible for the plaintiff district and the United States to determine upon the terms of and to enter upon and execute such repayment contract because of additions of new units to the project which are under construction but not yet completed, and also because of units of said project which are authorized for construction but upon which construction has not commenced; that, being construed as a temporary or interim contract, there will be thereby preserved to the plaintiff district and the landowners therein the opportunity, at the proper time, to enter into such repayment contract whereby the [fol. 202] plaintiff district and its landowners as beneficiaries under the express trust as hereinabove alleged may be assured of or acquire permanent rights to the use of water from the works of said project pursuant to the laws of the State of California.

Wherefore, this answering defendant prays as follows:

That in the event this Court validates the contract in issue in this proceeding, the decision and judgment of this Court recite and confirm: (a) That the United States has not and does not acquire any beneficial interest or right of ownership or title in and to any waters of the State of California for purposes of said project by virtue of or pursuant to this proceeding or by virtue of or pursuant to the contract as validated by this Court; (b) the trust status of the United States in relation to the subject matter of the contract, a portion of the waters of the State of California; (c) the beneficial interests of the plaintiff district and its landowners therein as beneficiaries of such trust; (d) the status of the State of California in respect to the water to be delivered pursuant to said contract and its powers in respect thereto; (e) that neither the contract nor the validation thereof shall preclude said district and its landowners from acquiring a perpetual supply of water, appurtenant to the lands irrigated to the extent beneficial use is made thereof subject only to the payment of lawful charges for the delivery thereof, and

such conditions as are or may be in accordance with the laws of this State and of the United States applicable thereto; and further, (f) that this Court is not required to, does not, and does not purport to determine, define, limit or in any manner or at all, affect the powers and duties or authority and responsibilities of this answering [fol. 203] defendant under the laws of the State of California; and

For such other and further relief as may be proper in the premises.

Department of Public Works of the State of California, by A. D. Edmonston, State Engineer and Chief of the Division of Water Resources.

Henry Holsinger, Irving Pfaffenberger, Gavin M. Craig, by Henry Holsinger, Attorneys for the State Engineer, and Chief of the Division of Water Resources, Department of Public Works of the State of California.

[fol. 237] In Superior Court of Tulare County

No. 39627

Findings of Fact and Conclusions of Law—Filed February 27, 1953

In this proceeding the Ivanhoe Irrigation District, a water users' organization formed and existing under the laws of the State of California, seeks the validation of a purported contract dated September 23, 1949, between itself and the United States of America, acting by the Secretary of the Interior and the United States, Bureau of Reclamation. The proceeding, pursuant to Section 23225 of the Water Code of the State of California, is in response to the provisions of Federal law and the contract making the effectiveness of any such contract dependent upon such validation. The proceeding is *in rem* and the decree entered herein will bind, among others, the landowners of all of the land within the Ivanhoe Irrigation District,

and the State of California, and every agency thereof; under Section 22680 of the California Water Code, the provisions of the contract are rendered inseparable and the judgment, therefore, must declare the contract either valid or invalid. The contract deals, among other matters, with the supplying of water from the works of the Central Valley Project by the United States Bureau of Reclamation to the District limited to a period of 40 years, and purports to impose various conditions and obligations upon the District with respect to the use and disposition of such water. In these circumstances, it is necessary to a decision as to the validity of the contract that the respective relationships of the United States, the State of California, the District and its landowners, with respect to such water be considered and determined.

[fol. 238] This proceeding was instituted by Ivanhoe Irrigation District by the filing of its complaint or petition on the 31st day of October, 1949, and by the publication of summons thereon. In response thereto the State of California by and through the then Attorney General appeared on behalf of the People of the State of California by demurrer. Ivanhoe Irrigation District, after due notice, moved to strike the appearance of the State of California, which motion was denied. Thereafter an answer on behalf of the People of the State of California as a defendant to said proceeding, was filed by the then Attorney General of California.

The Regional Counsel and the Assistant Regional Counsel for the Bureau of Reclamation of the Department of the Interior of the United States on due notice moved to appear in the proceeding throughout as amici curiae. The appearance in this manner was objected to on the grounds that any interested party should appear, not as amicus curiae, but as a party to the proceeding and by appropriate pleading and representation as parties to the proceeding. Leave to appear amici curiae was granted and Counsel for the Department of Interior, Bureau of Reclamation, participated throughout the proceedings.

The Di Giorgio Fruit Corporation moved to appear in the proceeding as amicus curiae and was granted leave to do so. Counsel for the Di Giorgio Fruit Corporation

participated in oral argument and filed a brief amicus curiae.

Courtney McCracken, as an owner of land within Ivanhoe Irrigation District, appeared by demurrer and thereafter by answer.

[fol. 239] The matter being at issue, the cause was set for trial in March of 1951, at which time the then Attorney General of the State of California appeared and requested leave to withdraw the answer theretofore filed by the previous Attorney General, and for leave to file an amended answer on behalf of the People of the State of California. The matter of the Water Project Authority of the State of California being a necessary party to the proceeding having been considered and an opportunity having been given to the Water Project Authority of California to appear, leave to file an amended answer on behalf of the People and leave to file an answer on behalf of the Water Project Authority of the State of California was given, and thereafter an amended answer on behalf of the defendant, the People of the State of California, and an answer on behalf of the Water Project Authority of the State of California were filed. Thereafter and by leave of Court an additional and separate answer on behalf of the State Engineer and the Chief of the Division of Water Resources, Department of Public Works of the State of California, was filed by and through separate counsel therefor.

The issues herein were thereupon joined upon the complaint of Ivanhoe Irrigation District, the amended answer of the defendant the People of the State of California, the answer of the defendant Water Project Authority of the State of California, and the answer of the defendant, State Engineer of California, and the Chief of the Division of Water Resources, Department of Public Works of the State of California, and the answer of the defendant McCracken.

The cause having proceeded to trial upon the issues so [fol. 240] joined and upon the issues necessarily resulting from said proceeding and the matter having been heard, briefed, and argued, and the Court having arrived at its decision and made and filed its written memorandum deci-

sion and order for findings and findings having been prepared and submitted to all parties concerned, and the Court having considered all matters relative to said Findings of Fact and Conclusions of law, now makes these, its Findings of Fact and Conclusions of Law and in connection therewith finds the facts to be as follows:

Findings of Fact

I.

That Ivanhoe Irrigation District, the plaintiff herein, is now and has been at all times since January 8th, 1948, an irrigation district duly organized and existing as such under and by virtue of the laws of the State of California. That the office of the board of directors of Ivanhoe Irrigation District and its principal place of business is now and has been at all times h in mentioned located in the town of Ivanhoe, County o. Tulare, State of California. That the lands within said Irrigation District are now and were at all times herein mentioned in the County of Tulare, State of California.

II.

That for many years prior to 1948 the State of California had been making studies, developing plans and proceeding with an over-all plan for the conservation, storage and distribution of water from its intrastate streams and sources of water supply to the end of having and furnishing of a supplemental supply of water where needed to developed areas and the furnishing of a supply of water [fol. 241] where needed and as available to undeveloped areas. That as a part of this over-all plan of the State of California, there came into being a project which has become known and designated as the "Central Valley Project of California". That the Central Valley Project was, pursuant to act of the Legislature of the State of California enacted August 5, 1933, and duly approved upon referendum by the electors of said State on December 19, 1933, duly authorized as a coordinated plan for the development of the Sacramento and San Joaquin Rivers through a system of physical works for the primary purpose of

conserving, transporting, and by means of exchange of waters, making a supplemental supply of water available to agricultural lands within the said Central Valley Project possessing an insufficient supply of water; that for that purpose and deemed an indispensable part of said authorized project, works were planned and constructed, including the construction of Shasta Dam on the Sacramento River to store and conserve the waters thereof, and to make available by means of an exchange of waters, surplus waters from the Sacramento River to the large area of agricultural land in the San Joaquin Valley having an insufficient water supply, and to substitute, in part, such surplus waters from the Sacramento River for waters of the San Joaquin River impounded and diverted at Friant Dam on the San Joaquin River for use in the San Joaquin Valley; that the Central Valley Project is within the Great Central Valley of California, lying between the Sierra Nevada and the Coast Range and extending north and south a distance of approximately 450 miles; that said Great Central Valley consists of the Sacramento Valley in the north and the San Joaquin Valley in the south, the major rivers being the Sacramento and the [fol. 242] San Joaquin Rivers, respectively; that the Sacramento River runs in a southerly direction from its source in the Siskiyou and Sierra Nevada mountains in Northern California above the Shasta Dam, and the San Joaquin River runs in a northerly direction from its source in the Sierra Nevada mountains above Friant Dam and east of Fresno in the southerly portion of the San Joaquin Valley, both rivers converging in the common delta of said rivers in the upper reaches of the San Francisco Bay; that of the acreage in the two valleys about three-fifths lies in the San Joaquin Valley, while about two-thirds of the water production of the area comes from the Sacramento River; that as part of said authorized project, works were planned to impound and divert at Friant Dam the waters of the San Joaquin River northerly in the Madera Canal and southerly in the Friant-Kern Canal for the irrigation of lands generally, along the easterly side of the San Joaquin Valley, including service from the Friant-Kern Canal to the lands in the plaintiff district, the waters

so diverted to be replaced in major part by the transportation of excess and unneeded waters of the Sacramento River; that all waters utilized and to be utilized under said project plan rise and flow wholly within the State of California, and that for many years prior to the adoption of the project plan by the State there was, and now is, an extensive agricultural development within said San Joaquin Valley, including plaintiff district, and most lands within said Valley were, and now are, under production and under irrigation from privately acquired or developed sources of water supply; that much of the irrigation was and is by pumping from underground water supplies, and that the available surface and underground water supplies [fol. 243] were and are gradually being seriously reduced and were and are in need of replenishment.

That as a part of this general program, the facts concerning which are hereinafter more specifically found upon, the Director of Finance of the State of California filed applications to appropriate the unappropriated waters within the State of California. That among these applications were applications to appropriate water as and for a supplemental water supply for the area and lands now included within the boundaries of Ivanhoe Irrigation District.

III.

That Ivanhoe Irrigation District was organized for the purpose of procuring a supplemental water supply for the land within its boundaries. That upon its organization its board of directors, in an effort to procure a supplemental water supply in keeping with the long-standing water plans of the State of California, attempted to procure a contract for such a supply. That the Bureau of Reclamation of the Department of Interior of the United States of America, claiming to be the sole agency through which a supply might be obtained, offered a contract to Ivanhoe Irrigation District in the words, terms and figures of that contract set forth as Exhibit A attached to plaintiff's complaint herein. The area within Ivanhoe Irrigation District in 1949 had suffered, in common with other areas within the San Joaquin Valley, a period of insufficient rainfall and

was in need of a supplemental water supply. Being unable to obtain a supplemental water supply from any other source, and being unable to obtain any other or different contract than that proffered by the Bureau of Reclamation of the Department of Interior of the United States, said [fol. 244] Exhibit A, the board of directors of said Ivanhoe Irrigation District did, on or about the 24th day of May, 1949, pass that certain resolution set forth as Exhibit B attached to plaintiff's complaint.

IV.

That pursuant to said resolution, Exhibit B attached to said complaint, Ivanhoe Irrigation District did file with the Districts Securities Commission of the State of California the District's application for the examination, investigation, report and order of the Districts Securities Commission on said proposed contract. That upon consideration of said proposed contract by the Districts Securities Commission of the State of California, said Commission did conditionally approve said contract with the following provisos and limitations:

"The Commission has felt and still feels that this and other Bureau of Reclamation contracts contain provisions which appear to it objectionable and possibly in some respects contrary to constitutional and statutory law. However, the validity of the proposed contract, as required by its provisions, must be finally determined by a court of competent jurisdiction in validation proceedings and such is considered the appropriate forum to pass judgment thereon.

"The execution by the District of the proposed contract with the United States Government entitled, 'Contract between the United States and the Ivanhoe Irrigation District, providing for water service and for the construction of the distribution system', and iden- [fol. 245] tified by the mark 'Sacramento Office Draft 3-8-49 Rev. W. O. 4-27-49' is hereby approved.

"In reaching this decision, the objections of the Commission to the so-called '9(e)' or 'Utility-type Con-

tract', many of the provisions of which are deemed to be arbitrary and inequitable and lacking in mutuality, are largely overcome by the overwhelming evidence in support of the need of the area for additional water."

That said report and order of the Districts Securities Commission of the State of California is in the words, terms and figures as set forth in Exhibit C attached to plaintiff's complaint.

V.

That thereafter and in the month of May, 1949, the board of directors of Ivanhoe Irrigation District purportedly called a special election and purportedly submitted to the qualified electors within Ivanhoe Irrigation District the proposition for the approval or rejection of said proposed contract. Said matter being so submitted to the electors being that proposition set forth in paragraph V of plaintiff's complaint herein. That a purported special election was held in response to said notice and proposition specifically set out in said paragraph V of plaintiff's complaint. That at said election 251 votes were cast, 218 thereof being in favor of the approval of said proposition and 33 votes being cast against the approval of said proposition. The Court further finds that said special election was not duly called, noticed or held and that said special election was not legally and/or fairly conducted and in that regard the Court specifically finds that the notice [fol. 246] of election specifically represented to the voters within said District that a distribution system to each unit of not exceeding 160 acres of land within a total of 10,000 acres of land within said District would be constructed under said contract by the United States at a cost of not to exceed $1,589,807.00, which said cost was to be repaid in 40 equal annual installments without interest. That in truth and fact said notice of election and said proposition as noticed in said notice of election was false and fraudulent and a misrepresentation of the terms and provisions of said contract and said contract did not and does not conform to said notice of election and said contract does not contain or state the maximum principal costs to be

paid by the plaintiff District and/or the landowners therein for said completed distribution system and said notice of election does not correctly, but does incorrectly and erroneously set forth the purported provisions of said contract sought to be validated as the same relate to said distribution system. That said election notice does not contain a statement of the maximum amount of construction costs to be paid to the United States, either as to said distribution system and/or as to the portion of the construction costs of the major works of the Central Valley Project used or useful in connection with delivery of water to the plaintiff District and for which the landowners within said District and said District will be called upon to make repayment. That said election notice does not contain a statement or description of the property to be conveyed by the plaintiff District to the United States in connection with said contract.

That said proposed contract Exhibit A, in addition to [fol. 247] providing for a supplemental supply of water, contains provisions for the construction of a surface or pipeline distribution system for the distribution of the supplemental water within the boundaries of the Ivanhoe District, and in submitting the proposition to the qualified voters within said District as to the approval or disapproval of said proposed contract, there was represented to said voters, including by means of the notice of election, that the design and construction of said distribution system would provide a surface or pipeline distribution system for the delivery of water to each unit of not more than 160 acres of land for a total of 10,000 acres of land, at a cost to the District of not to exceed $1,589,807.00. Said amount to be repaid by the District in forty (40) equal annual payments without interest.

That the United States now claims that the United States is under no obligation under said contract herein sought to be validated to construct a complete distribution system to 10,000 acres of said land within said District or any material part thereof, for such sum of $1,589,807.00 and claims that the United States in the construction of said distribution system to said 10,000 acres of land in units of not more than 160 acres for all of said 10,000 acres of

land, may add to and charge in excess of said $1,589,807.00 by such amount and to such extent as the Secretary of Interior may from time to time determine, and without regard to the provisions of the contract herein sought to be validated. That said Secretary has now indicated that the additional costs considered by the Secretary to be the costs of such distribution system is, and will be, at least $686,193.00.

VI.

[fol. 248] That thereafter and pursuant to the provisions and requirements of Article 42 of said contract Exhibit A attached to said complaint, and pursuant to the terms and provisions of that certain resolution of the board of directors of Ivanhoe Irrigation District duly passed on September 7th, 1949, and attached as Exhibit D to the plaintiff's complaint, and pursuant to the provisions of Section 23225 of the Water Code of California and to the extent adopted therein, the provisions of Sections 22670-22684 of the Water Code of California, this proceeding was authorized and instituted by Ivanhoe Irrigation District to obtain a judicial examination, approval and confirmation of (1) all the proceedings had and taken for the organization of Ivanhoe Irrigation District as an irrigation district; (2) for such a determination of all the proceedings leading up to and including the claimed execution and delivery of said proposed contract, Exhibit A; (3) the validity of said contract Exhibit A, and of each and every term and provision thereof; and (4) the right and authority of the respective persons signing the same and the parties thereto to execute said proposed contract.

VII.

That the gross area contained within the boundaries of Ivanhoe Irrigation District is approximately 11,117 acres. That of this area approximately 9,968 acres is land that is suited for reclamation, cultivation and irrigation. That of said gross area approximately 8,865 acres had been reclaimed and developed and were in a high state of cultivation and had been made such by the development by the owners of said land of a system of irrigation for said

acreage. That said lands were served by a system of private pumps owned by the respective landowners, together [fol. 249] with local and private distribution systems for such pumped water to the respective lands. That a part of the said area was served by means of ditches and a supply of water brought to said land owned by said landowners and furnished through the facilities of a private ditch company. That the population within said Ivanhoe Irrigation District was at the time of the execution of said contract approximately 1,000 persons. That it was believed that by procuring the supplemental water supply in the amounts as provided for in said contract Exhibit A attached to said complaint, that the population within said area could be increased by approximately 150 persons. That it was believed that the reclaimable and irrigable acreage within said District by means of such supplemental supply could be increased from 8,865 to 9,968 acres. That under full development it was believed that the consumptive use of water for the irrigation of all of said properties would be approximately 24,000 acre feet per year for the 9,968 acres. That of this 24,000 approximate acre feet per annum of consumptive use, the need for supplemental water would be approximately 7,700 acre feet.

VIII.

That in said contract in these findings referred to as Exhibit A, for purposes of clarity, reference is hereby made to the fact that said contract provides for two things,—one, a supply of water to be brought from Friant Dam and through the Friant-Kern Canal as a part of the Central Valley Project to a delivery point on the boundaries of the plaintiff District, which phase of said contract relative to the delivery of such water is and will be in these findings referred to as the water delivery contract or water delivery features of the contract; two, that [fol. 250] in addition to providing for the delivery of water as just recited, said contract also contains provisions relative to the construction by the United States of a local pipeline or surface distribution system for the distributing within the boundaries of Ivanhoe Irrigation District the water to be delivered at the District's boundary.

That the distribution system features of the contract have been and will hereinafter be referred to as the distribution system or distribution system features of the contract.

IX.

That commencing in 1850 the State of California made studies throughout the State of California, including in particular in the Sacramento and San Joaquin Valleys, for the conservation of its water resources; the said studies continued throughout the years and there was developed by the State of California a State Water Plan. As a part of this Plan for the conservation of its water resources, the State of California made studies of all available dam sites for the storage and ultimate distribution for agricultural as well as other purposes, of its water resources. As a part of and in keeping with such endeavors and in order to have all waters that had not been appropriated and put to use available for such plans, the State of California in 1927 and following, authorized and caused the Director of Finance of the State of California to on behalf of the State of California and in furtherance of such development, file with the State Engineer, Division of Water Resources, Department of Public Works of the State of California (hereinafter in these Findings referred to as "State Engineer") applications to appropriate and put to use all of the unappropriated waters with the State of [fol. 251] California, and pursuant thereto, the Director of Finance of the State of California did file such applications on all of the major sources of water supply within the State. That included within the studies and the steps taken by the State of California were detailed studies and engineering reports with particular relation to the Sacramento and San Joaquin Valleys of California of a project that came to be known and is known as the "Central Valley Project of California". That the Central Valley Project of California, as planned by the State of California, includes the construction of dams, hydro-electric development, the storage of water, and the construction of canals for the distribution of water to areas within the Sacramento and San Joaquin Valleys of California, including the service of water from Friant Dam through the Friant-

Kern Canal to the identical lands included within the boundaries of Ivanhoe Irrigation District. That to carry out the studies and plans of the State of California, in 1933, through legislative action there was brought into being an agency of the State of California known and designated as "The Water Project Authority of the State of California". That said agency was given and still has, not only the right and power to, but the duty to, construct, operate and maintain the project, including the making of contracts with water users and the collection of rates, charges and revenues therefor, and to repay the costs of the project. That said Water Project Authority was authorized to issue and sell $170,000,000.00 in bonds to finance the construction and operation of said Central Valley Project. That in 1934, because of the then existing depression, said Water Project Authority of California, deeming it not advisable to sell said bonds at said time, made [fol. 252] application to the Federal Emergency Administration of Public Works for a loan and grant to the Water Project Authority of the State of California, said loan and grant to be utilized to construct and operate said Central Valley Project and to be repaid through revenues realized by said Water Project Authority of California from said Central Valley Project of California. That while this application was pending and in 1935, as a part of the relief program to create employment and aid in construction of public works, there was allocated by presidential order $20,000,000.00 for use in connection with the Central Valley Project of California. In March of 1936 a contract was entered into by and between the Water Project Authority of California and the Federal Government under the Emergency Relief Appropriation Act of 1935 of the United States, which contract provided, among other things, "in order for the accomplishment of the early construction and operation of the project in the most expeditious and economical manner, the Bureau of Reclamation and the Water Project Authority shall cooperate fully with each other in attaining such end", and "it is contemplated that at the earliest practicable date a contract will be entered into between the United States and the Water Project Authority providing for—

"(a) The operation and maintenance by the Authority of useful units of the project, upon presenting assurances of payment satisfactory to the United States of the costs thereof;

"(b) Appropriate payment by the Authority to the United States for expenditures in construction of the project;

"(c) The securing by the Authority of the appro- [fol. 253] priate contracts for disposal of facilities to be made available by the project."

X.

On March 13, 1937, and on November 8, 1937, supplemental contracts to said contract of March, 1936, were entered into by and between the Water Project Authority and the Federal Government containing (a), (b), and (c) above quoted, but the introductory recital in said supplemental contracts read: "It is contemplated that at the earliest practicable date, and *as soon as permitted by law*, a contract will be entered into between the United States and the Water Project Authority . . .". That the provisions relative to (a), (b), and (c) above quoted in said contract of March, 1936, and in contracts supplemental thereto have never been revoked.

XI.

Thereafter the Water Project Authority of the State of California and the agents and representatives of the State of California attempted to procure from the United States of America a contract or contracts whereby the State of California by and through the Water Project Authority of California could and would proceed with the making of contracts with irrigation districts and other agencies for the delivery of water from the Central Valley Project of California to the areas to be served and to enable the Water Project Authority of California to operate and maintain the useful units of said project and to repay to the United States the repayable costs of said Project. That any contract or contracts in connection there-

with and to that end were and have been refused by the United States, and the United States, through the Depart- [fol. 254] ment of Interior and the Bureau of Reclamation, has insisted that all contracts for the delivery of water or other service from the Central Valley Project, as it has been from time to time completed and/or is being constructed, should be made exclusively by and through the Bureau of Reclamation and Department of Interior of the United States and directly with irrigation districts or other local agencies within the boundaries of which the waters of the Project are to be used, and upon such terms and conditions as should be prescribed by the Bureau of Reclamation.

That although now and for several years past, the United States, acting by the Bureau of Reclamation, has maintained that numerous provisions of the Federal Reclamation laws, including the so-called 160-acre limitation, must, as a matter of Federal law, be applied to the Central Valley Project, the United States did not disclose or make known to the State of California or its representatives any intention so to apply such provisions, or any claim that such provisions were applicable thereto, until in or about the year 1941.

XII.

That among the applications made by the State of California, acting through its Department of Finance and Director of Finance, pursuant to certain statutes adopted by the Legislature of California, were the following applications duly filed in the office of the State Engineer to appropriate water from the Sacramento River and the San Joaquin River, to wit: application 5625, records of the State Engineer, Division of Water Resources, to appropriate water of the Sacramento River at Shasta Dam, filed July 30, 1927, to appropriate a diversion of 11,000 second feet constituting 3,190,000 acre feet per annum of storage [fol. 255] for power purposes; application 5626, records of the State Engineer, Division of Water Resources, filed July 30, 1927, to appropriate the waters of the Sacramento River at Shasta Dam to divert 8,000 second feet constituting 3,190,000 acre feet per annum for irrigation, do-

mestic use, saline, flood control and navigation purposes; application 9364, records of the State Engineer, Division of Water Resources, filed August 2, 1938, to appropriate the waters of the Sacramento River from Shasta Dam to divert 9,000 second feet constituting 3,000,000 acre feet per annum for irrigation purposes; application 9365, records of the State Engineer, Division of Water Resources, filed August 2, 1938, to appropriate waters of the Sacramento River at Shasta Dam to divert 7,000 second feet constituting 3,310,000 acre feet per annum for power purposes; application 5637 records of said Division filed July 30, 1927, to appropriate the waters of the San Joaquin River at Friant Dam to divert 4,500 second feet constituting 1,210,000 acre feet per annum for power purposes; application 5638 records of said Division to appropriate the waters of the San Joaquin River at Friant Dam to divert, 5,000 second feet constituting 1,210,000 acre feet per annum for irrigation, domestic, and flood control purposes; application No. 9369 records of said Division to appropriate the waters of the San Joaquin Rivert (sic) at Friant Dam to divert 2,000,000 acre feet per annum for irrigation, domestic use and flood control.

That the waters involved in these applications are necessary to enable the furnishing of a water supply from Friant Dam through the Friant-Kern Canal to the lands within the Ivanhoe Irrigation District, including the lands of the defendant McCracken. That the United States sought unconditional assignments from the Department of Finance [fol. 256] of the State of California to the United States of the aforesaid applications, which unconditional assignments were refused and conditional assignments were made providing that the waters involved within the assigned applications were to be used in furtherance of and as a part of the Central Valley Project of California and for the delivery to the lands to be benefited by said applications. That included within the designations contained in said applications and the maps and data filed in connection with the aforesaid applications was a description of the property to be served and benefited by said applications and that said description and descriptions included the identical land now contained within the Ivanhoe Irriga-

tion District and included the land of the defendant McCracken. That the water to be delivered from Friant Dam and through the Friant-Kern Canal under the provisions of said contract Exhibit A attached to said complaint is a part of the water involved in said applications to appropriate water, which applications were made, as aforesaid, by said Director of Finance and were conditionally assigned to the United States in trust for the use and benefit of the Central Valley Project and which water was designed and intended to be appropriated for delivery to the lands now comprising the area within the boundaries of Ivanhoe Irrigation District, as well as other lands within other irrigation districts and similar water agencies within the area to be served by said Project. That said applications are still pending and are in good standing and that proceedings are pending before the Division of Water Resources, Department of Public Works of the State of California, as to permits to be issued in connection therewith. That there is now being delivered by the United States to the Ivanhoe Irrigation District water from Friant Dam and through [fol. 257] the Friant-Kern Canal for use on the lands within the district, which said water is included in said applications and assignments. This water is now being beneficially used by the plaintiff District and the landowners therein.

That the application made to the State Engineer to appropriate unappropriated water created in the applicant in trust for the persons for whose benefit the application was made and in such beneficiaries, an incomplete, incepient (sic) and conditional right in the water applied for and which right the Court expressly finds to be, as applied to all parties and persons for whose benefit said applications were filed, including the landowners in the plaintiff District, a vested interest in real property.

That the United States has acquired in trust vested appropriative rights to the use of the waters of the San Joaquin River which are not subject to the jurisdiction of the State Engineer, but by far the greater portion of the water required for project purposes is subject to permits therefor to be issued by the State Engineer; that the United States now holds such applications, the more important having been acquired by assignment in trust from

the State Department of Finance as herein found, for water sufficient for the project purposes; that permits by the State of California for the use of said water have not as yet been issued; that these findings and conclusions are not intended to, nor shall they, in anywise interfere with, restrict, or limit the lawful discretion of the State Engineer in acting upon such applications, or in the issuance of permits and licenses pursuant thereto, or in conditioning the same in the public interest, but that it is intended that he should proceed to exercise the discretionary power vested in him without undue delay or injury to the water [fol. 258] users within the District.

That all applications to appropriate unappropriated waters of the Sacramento and San Joaquin rivers and their tributaries, or any thereof, duly filed with the Division of Water Resources, Department of Public Works of the State of California, and which continue in good standing on the records of said Division, which were made, acquired or now held by the United States of America, Bureau of Reclamation, with the objective of acquiring rights to the use of such water to be delivered through the works of the Central Valley Project for irrigation, whether such applications were made by said United States, or acquired from others, including the State of California, Department of Finance, are held by the United States as trustee for the beneficiaries of said Project; that said applications to appropriate the unappropriated waters of the Sacramento River were made and acquired by the United States in part to enable the delivery of water through project works in accordance with the obligation of the United States pursuant to said Exchange Contract as recited in these findings, and in order to enable the United States, in operating said Project, to utilize water of the San Joaquin River equivalent in quality and quantity to that imported from the delta of the Sacramento and San Joaquin Rivers, and derived in part from the Sacramento River; that the plaintiff Ivanhoe Irrigation District and its landowners are beneficiaries of said trust as herein found, including the right to require the United States to exercise due diligence in completing said applications and in particular, subject to the proper exercise of

discretion of said State Engineer in acting on said applications, to secure the issuance by said State Engineer to [fol. 259] the United States, of permits pursuant to said applications; that the United States has failed and neglected to complete the required procedure to secure permits and licenses. The application of said water to a beneficial use by plaintiff Ivanhoe Irrigation District and its landowners and water users vested an appropriative right appurtenant to all lands within said district to continue to receive and to beneficially use the appropriated water with priority as of the date of said applications, subject only to conditions lawfully imposed as authorized or required by the laws of the State of California.

XIII.

That the studies of the State of California relative to the conservation and use of the water resources of the State of California, as more particularly hereinbefore outlined, and the adoption of a State Water Plan by the State of California and in particular the preparation of the plans, designs and the planned construction of the works to be and constitute the Central Valley Project of California and the creation of the Water Project Authority as an entity and agency of the State of California for the purpose of planning, constructing, operating, maintaining and repaying the costs of said Central Valley Project of California and the construction of all works in connection therewith, including units added to the original planned Central Valley Project of California have been and were designed and planned as a permanent project. That the construction of the dams and canals for the storage and delivery of storage water within said Central Valley Project to the various areas to be benefited, including in particular the lands within the plaintiff District and including the plans for the construction of a distribution system within [fol. 260] said plaintiff District, each and all were planned and designed, constructed, and are being operated not as temporary works, but as permanent and perpetural (sic) works for the continued delivery of water to the lands within the plaintiff District (as well as other irrigation districts and like agencies within said Central Valley Project).

That the construction, operation and maintenance of works within the Central Valley Project of California by the United States, including the construction of distribution systems for the use of water by local districts, was authorized in 1937 by special act of Congress, as amended; that at all times subsequent thereto there have been and now are no irrigable public lands of the United States subject to reclamation by use of irrigation water from said Project; that the United States is not the owner of any lands within the service area of said Project upon which water can or will be applied to beneficial use; that said special acts, as amended, did not and do not include any provisions or in anywise provide for the application to said Project, or any part thereof, of any acreage limitation, as such term "acreage limitation" is used in these Findings.

That the provisions of said special act, as amended relative to reimbursement to the United States of the reimbursable cost of said Project relate only to the reimbursement of the United States in the manner provided by the Federal Reclamation Laws and were not intended to conflict with the State law or to deprive landowners within said Project of property or property rights.

XIV.

That by contract dated the 27th of July, 1939, by and [fol. 261] between the United States and the South San Joaquin and Kings River Canal and Irrigation Company, Inc., and other corporations commonly referred to as the "Exchange Contract", and by contract dated July 27, 1939, between the United States and Miller & Lux, Incorporated, and Gravelly Ford Canal corporations doing business in California, and by other comparable contracts, reference to which is made in paragraph (d) of Article 16 of the contract herein sought to be validated, the United States acquired certain appropriative and prescriptive rights, contract rights and estoppels against the exercise by the companies with whom said contracts were made, in and to the waters of the San Joaquin River and its tributaries and the United States by said "Exchange Contract" agreed to deliver to said contracting companies in lieu of and in exchange for their rights to certain waters of the San Joaquin River other and different waters from the

Sacramento River and its tributaries, which other and different waters were to be imported to the Mendota Pool by means of the Delta Cross-Channel, Tracy Pumping Plant and the Delta-Mendota Pool Canal. That the United States entered into all of said contracts herein referred to in order that waters of the San Joaquin River and its tributaries above Friant Dam could be stored in Friant Reservoir and diverted northerly through the Madera Canal and southerly through the Friant-Kern Canal for the irrigation of lands in the counties extending from Madera on the north to Kern on the south, and which lands are located generally on the easterly side of the San Joaquin Valley floor, including, among other areas, the lands within the plaintiff District (as well as other lands within other irrigation and similar districts within the service area in said easterly portion of said Valley). That [fol. 262] it was and is intended and proposed by the contract herein sought to be validated that the United States shall deliver waters impounded in Friant Reservoir, sometimes known as Millerton Lake, and convey the same through the Friant-Kern Canal for the irrigation of the lands in the plaintiff District, and in particular to the lands of the defendant McCracken. That in the making of said contracts by the United States with said contracting companies and in the acquiring of such exchange rights and estoppels, the United States did not do so in connection with the serving of any property or lands of the United States. That said contracts were so made, designed and intended solely as a means of arranging an exchange of waters from the Secramento (sic) River to serve lands theretofore served by waters of the San Joaquin River and to enable the taking of waters from the San Joaquin River and in particular from Friant Dam to the lands for which said San Joaquin River waters had been appropriated, including the lands within plaintiff District. That the United States, in making said contracts and in acquiring such rights, did so wholly and solely in connection with said Central Valley Project of California and that any and all costs in connection therewith are and were charged by the United States to said Project as a part of said Project costs and that all such costs are and will be

treated as a part of such Project costs to be returned to the United States as in the manner of the return to the United States of its other returnable costs in connection with said Project. That any and all such rights and interests of the United States are held by the United States solely as trustee for the use and benefit of said Central Valley Project, including the plaintiff District and the lands of the defendant McCracken and that the use of [fol. 263] such rights and waters involved therein can be made only in connection with the operation of said Central Valley Project.

XV.

That the United States acting by and through the Department of Interior maintains and asserts that the Central Valley Project of California, as herein referred to, was authorized for construction by and through the Bureau of Reclamation in and by acts of Congress as follows: The Rivers and Harbors Act of 1937, the Rivers and Harbors Act of 1940, the Act of Congress approved October 14, 1949, and an Act of Congress approved September 26, 1950. That the United States, acting through the Secretary of the Interior and Bureau of Reclamation, has substantially completed the construction of said Project (with the exception of that portion thereof set forth in subsection 7 of paragraph XIX hereof) and is now operating and maintaining the usable, completed works of said Project.

XVI.

That the United States acting by and through the Department of Interior maintains and asserts that it is the sole and exclusive agency for the selling of water to Ivanhoe Irrigation District and other irrigation districts and similar agencies within the Project from Friant Dam and the Friant-Kern Canal. That through the Bureau of Reclamation of the Department of Interior of the United States the only contract or contracts which have been offered or which the United States is willing to make in connection therewith with Ivanhoe Irrigation District, or other irrigation districts and like agencies within the Project,

has been and is, as to plaintiff District, the contract Ex-
[fol. 264] hibit A attached to the complaint, and as to other irrigation and similar districts and agencies within the Project, contracts of the same import and effect. That said contract which is offered by the Bureau of Reclamation of the Department of Interior on behalf of the United States is one which the officials of the Department of Interior and the Bureau of Reclamation of the United States claim and contend is authorized and provided for by Section 9(e) of the Reclamation Project Act of 1939 of the United States; Act of August 4, 1939, Chapter 418, 53 Stats. 1184, 43 U. S. C. 485. In that connection it is claimed by the officers, agents and representatives of the Bureau of Reclamation, Department of Interior of the United States and the Secretary of Interior of the United States as follows:

(1) That under the authority of said Section 9(e) of said Reclamation Act of 1939 the contract Exhibit A attached to plaintiff's complaint, is a utility-type contract by which the United States may in perpetuity control and distribute the waters from Friant Dam and through the Friant-Kern Canal to the lands within Ivanhoe Irrigation District, and to other irrigation districts and like agencies and to lands therein within the Project, and that said contract is in no sense a repayment contract and is in no sense a contract under which Ivanhoe Irrigation District and/or the landowners within Ivanhoe Irrigation District are entitled to any credit upon repayable construction costs of Friant Dam or the Friant-Kern Canal or any of the works used or useful in the delivery of water to the Ivanhoe Irrigation District. That the contracts offered to other irrigation districts and like agencies within the Project are to be of the same force and effect.

(2) That said contract Exhibit A attached to the plain-
[fol. 265] tiff's complaint does not and can not give or recognize any right in the Ivanhoe Irrigation District and/or the landowners within Ivanhoe Irrigation District to any continued delivery of water and that any right to water under said contract is not appurtenant to any of the lands within Ivanhoe Irrigation District and is not perma-

nent and that the Government of the United States is entitled upon the termination of said contract to require re-negotiations of a contract for continued delivery of water from said source by said means upon such terms and conditions as the United States may then determine.

(3) That the United States is entitled to and may attach as a condition to the use of water within the boundaries of Ivanhoe Irrigation District, that water may not be served by Ivanhoe Irrigation District for industrial or domestic purposes and that the United States may dictate the amount of acreage which may be owned by any one person and that the United States may require all landowners within Ivanhoe Irrigation District to select from lands held, had, owned and used by them limited acreages and that if the landowner does not select the acreage he will retain, that it will require the board of directors of the Ivanhoe Irrigation District to make the selection for the landowner and that if the board of directors does not make the selection, that the Secretary of Interior will make the selection for and on behalf of the landowner and that unless the landowner agrees and consents to the sale of the excess land over and above the limited acreage at a price in which the landowner has no voice, that the landowner may not receive any water for that excess acreage and that he may not receive water for any of his land unless he has made the selection of the so-called "non-excess [fo]. 266]. land" that he will retain. That in the Ivanhoe Irrigation District the Bureau of Reclamation has notified landowners of the Bureau's present requirement to make such selection and to execute contracts with the United States for the sale, at the direction of the United States and at the price fixed by the United States, of the so-called "excess land", and has notified the landowners that they may not receive water for any of their lands except by compliance with these directions. That the defendant McCracken has been so notified in writing by the Bureau of Reclamation of said requirements and that said requirements are being and will be enforced by the United States.

(4) That the Reclamation Act of 1939 authorized and empowers the Secretary of Interior to apply such of the

terms and provisions of the reclamation laws of the United States as are unrepealed, commencing with the Reclamation Act of 1902, as said Secretary from time to time may determine relative in particular to those matters hereinafter referred to and recited.

XVII.

The Court finds that it is not true that the Reclamation Act of 1939 and/or Section 9(e) thereof, as passed and adopted by the Congress of the United States, was intended to or understood to change, or did in fact change, the reclamation laws of the United States with respect to the matter of the law requiring the use by the Reclamation Bureau of 40-year repayment contracts that would provide for the return to the United States within a period of 40 years, without interest, that portion of the capital construction costs allocable and alloecated (sic) to irrigation and to be repaid by the water users. The Court finds that the theory of the utility-type contract withholding and denying a permanent and appurtenant water right, re- [fol. 267] quiring re-negotiation and not providing for a credit upon construction costs of the major works, was not made known or presented to the said committees or the said Congress of the United States and can not be said, as a factual matter, to have been intended by Congress in the passage of said Reclamation Act of 1939, or any part thereof, and that in fact it was understood and intended that the passage of the Reclamation Act of 1939 and all parts thereof did not and would not in anywise conflict with or change the basic reclamation laws of the United States requiring and providing for repayment contracts repaying the properly allocable and allocated costs to irrigation and to be repaid by the water users within a period of forty years, plus a development period of not to exceed ten years.

XVIII.

That the Central Valley Project is a multiple-purpose project initially designed and planned by the State of California and functioning for the general purpose of

irrigating arid lands in the Great Central Valley of California and other purposes. That the Great Central Valley of California is the Valley which lies in the basin of the Sacramento and San Joaquin Rivers and their tributaries. That said Project contemplates the use in said Valley for irrigation, municipal, domestic, power and other beneficial purposes of the water of the Sacramento and San Joaquin Rivers and their tributaries. That said waters rise, flow and discharge into the Pacific Ocean wholly within the State of California. That there are no irrigable public lands of the United States within the service area of the said Central Valley Project in said Great Central Valley. That said Project was planned and generally designed by [fol. 268] the State of California; that the plans, purposes and features of said Project are substantially as set forth and described in Bulletins 25, 26 and 29 of the Division of Water Resources, Department of Public Works of the State of California, which bulletins constitute reports submitted by said Division to the California Legislature of 1931 pursuant to acts of said Legislature requiring the preparation and submission of said reports; that said bulletins and reports contained therein are official documents of the Executive Department of the State of California.

XIX.

That the Central Valley Project was primarily designed to provide and does and will provide a stabilizing source of supplemental water supply for irrigation and other purposes incidental thereto on a vast acreage of lands now under irrigation in the Great Central Valley of California, some of which said lands without such supplemental water supply would have inadequate sources of supply. That the construction, operation and maintenance and management of said Central Valley Project will profoundly affect the economy and welfare of the people of at least 21 of the 58 counties of California embracing several million acres of land comprising more than one-half of the cultivated agricultural lands of the State. That the major engineering features of said Project include:

(1) Shasta Dam and Reservoir and hydroelectric power plant and Keswich Dam and power plant on the Sacramento River in Shasta County, California, with certain electric transmission lines leading from said Power Plants, and appurtenances thereto;

(2) Delta Cross-Channel, to conduct water of and from the Sacramento River and its tributaries across the said [fol. 269] delta to the lower San Joaquin River, together with the Tracy Pumping Plant and the Delta-Mendota Canal, to convey water from said delta to the Mendota Pool on the San Joaquin River;

(3) Contra Costa Canal, a canal leading from the Sacramento-San Joaquin Delta to the vicinity of Martinez;

(4) Friant Dam and Reservoir on the upper San Joaquin River near Friant, Fresno County;

(5) Madera Canal, to conduct water stored in Friant Reservoir northerly to a point on Chowchilla River;

(6) Friant-Kern Canal, to conduct water stored in Friant Reservoir southerly to a point on Kern River near Bakersfield;

(7) Folsom Dam and Reservoir and hydroelectric power plant on the American River near the City of Folsom, with certain electric transmission lines leading from said power plant, and appurtenances thereto, and related works;

(8) Sly Park Development.

XX.

That by virtue of the facts and circumstances herein found, recited and existing, including said assignments of said applications, the State of California has become and is the trustor of an express trust; the United States has become and is the trustee of that trust; the landowners, including the landowners of the plaintiff District, have become and are beneficiaries of that trust; that any and all claims or interests of the United States obtained by the contracts referred to in paragraph XIV of these Findings, including those referred to in the provisions of Article 16 (d) of the contract sought to be validated herein, and

[fol. 270] including similar and comparable contracts and by and through the assignments to which reference has herein been made as to said applications to appropriate water, are held by the United States as such trustee and as a part of the trust fund or res for the use and benefit of the plaintiff District as the representative of the landowners therein, in order to, among other things, preserve to such landowners the right to acquire permanent rights to the use of water from the works of said Project pursuant to the laws of the State of California and of the United States; that the United States does not have and will not own or have any right of ownership or title to any water of the State acquired or to be acquired for the purposes of said Project, other than as such trustee; that such trust status and relationship is hereby found to exist, and the effect of said contract, if it were validated, would be to create uncertainty and doubt as to those matters and thereby cast doubt upon the authority and jurisdiction of the authorities of the State of California to discharge their responsibilities under California law, and would deprive the State of California and the Water Project Authority of the State of California and the Division of Water Resources of the State of California of their rights, duties and responsibilities in the administration of the laws of the State of California and would deprive the plaintiff District and the landowners therein or (sic) property without due process and without compensation and would deprive all parties concerned of the right to be heard before the courts in the protection of their rights and interests.

XXI.

That the Secretary of Interior in constructing, operating and/or maintaining said project, is under mandate from [fol. 271] the Congress of the United States pursuant to Section 8 of the Reclamation Act of June 17, 1902, in the acquiring of any right to the use of water to acquire the same pursuant to the laws of the State of California relating thereto, and in operating said Project, to proceed in all respects in accordance with the laws of the State of California relating to the control, appropriation, use or distribution of water for irrigation, and that when

waters from the Project are delivered by the United States to a district, other than pursuant to a contract whereby said district seeks delivery of surplus project water to meet its temporary requirements, and such water is applied and beneficially used in the irrigation of district lands, the district and the landowners therein acquire a right in the water which is a vested interest in real property appurtenant to the lands irrigated in accordance with the laws of the State of California, limited only by continued beneficial use and such reasonable conditions as may be lawfully imposed by the State Engineer; and the Court finds that plaintiff district and the landowners therein are entitled to receive, and have received, delivery of project water from the United States, not as temporary surplus project water but as a continuous supply of project water, and that plaintiff District and the landowners therein have acquired a vested right in the water, and to the continued delivery of water from the Project for beneficial use on all district land, as an appurtenance to the lands irrigated, limited only by those conditions reasonably to be imposed in accordance with State law through the office of the State Engineer.

XXII.

That the State of California is one of the United States of America and appears in this proceeding in its sovereign, [fol. 272] governmental, and proprietary capacity as such State, in its own interest and for the protection of its own rights; also as parens patriae in the interests of and for the protection of all of its citizens, residents, landowners and water users, and its agency, the plaintiff District, and to protect the integrity and proper application of its Constitution and laws respecting water and the use thereof, water rights, contracts, property and property rights; also as trustor of an express trust hereinafter described, which trust relates to the use of water in the Central Valley Project herein mentioned; also as the owner of the corpus of the water to be used in and by the Central Valley Project and as the owner of the right of reversion of any rights to the use of such water which may be forfeited or otherwise terminated by non-use or otherwise; and as

trustee for the use and benefit of the beneficiaries of the Central Valley Project of the right to apply to beneficial use for irrigation in said Central Valley Project the appropriated waters of the Sacramento and San Joaquin Rivers and streams tributary thereto, which waters as commingled will be used for the purposes of said Project, including so-called "exchange waters" covered by the contracts heretofore made by the United States with the specified owners for the exchange of Sacramento River waters for waters of the San Joaquin River.

XXIII.

That the Water Project Authority of the State of California is a body politic and corporate, organized and existing under the laws of the State of California with the right, power and authority, among other things, to sue and be sued.

This is a proceeding in rem, binding upon all parties [fol. 273] and persons having, or claiming to have any interest in the subject matter of this proceeding.

XXIV.

That the defendant A. D. Edmonston is the duly qualified and acting State Engineer and Chief of the Division of Water Resources, Department of Public Works of the State of California. That the Division of Water Resources is a legally constituted division of the Department of Public Works of the State of California and that the State Engineer of California is the Chief of the Division of Water Resources. That A. D. Edmonston, as such State Engineer and as Chief of the Division of Water Resources of said Department of Public Works of the State of California is appearing herein pursuant to leave of Court granted to take all appropriate action in this proceeding. That the Division of Water Resources aforesaid is the agency of the State of California to which application to appropriate waters of the Sacramento and San Joaquin Rivers, as hereinbefore recited, was made and before which are pending the applications for permits relative to the use of said waters in the plaintiff District and other similar districts within the Central Valley Project of California.

XXV.

The validity or invalidity of the contract marked Exhibit A attached to the plaintiff's complaint depends measurably upon whether the United States has the right to the water to be delivered by it pursuant to contract, or rights to the use thereof, of title or ownership therein; and in determining the validity or invalidity of said contract there must be found and adjudicated as to all of the interested parties [fol. 274] to this proceeding, including all parties appearing herein, their respective rights, powers, status, relationships and duties regarding the use and control of waters within the State of California involved within the Central Valley Project and in particular those involved in the contract which is the subject of this action; that such a determination and definition of the rights, powers, status, relationships and duties, of the parties hereto and the parties interested in the subject matter of the action is necessary to determine the incidence and effect of the purported contract thereon; that the correspondence between the Attorney General of the State of California and the Secretary of Interior, copies whereof are attached to the amended answer of the Attorney General in this proceeding does not create, and is immaterial to, any issue concerning the validity of the contract involved herein.

XXVI.

That said contract factually is ambiguous, indefinite, uncertain and lacking in mutuality, among other things, in that it fails to define, set forth or accomplish an agreement between the parties and would, if validated, preclude a future determination, except the exclusive and final determination of the Secretary of the Interior, of the rights, powers and privileges of the plaintiff District and the landowners therein relative to such matters as water rights, ultimate and final credit for payments made by the District and the landowners within the District upon the contract, manner and methods of assessment of lands within the District and the determination and redetermination from time to time by the Secretary of the Interior as to what terms and provisions of the Reclamation laws of the United States

and what laws of the State of California are to be applied [fol. 275] to and govern said contract and said plaintiff District and the landowners therein.

That the purported contract marked Exhibit "A" and before this Court for validation is indefinite and uncertain and is without sufficient separate terms and conditions as to constitute a contract, in that said contract fails to indicate and specify the provisions of the Federal Reclamation Law that are to be considered as a part of said contract, and fails to eliminate the Reclamation Laws of the United States and the provisions of said Reclamation Laws that do not apply to said contract, and said contract fails to set forth the Reclamation Laws of other laws of the United States that are to apply to the operation of the Central Valley Project.

XXVII.

That the contract herein sought to be validated does not set forth or define the relative rights and duties of the parties thereto and of the beneficiaries of said contract and the parties directly interested and to be bound by said contract, and if validated without definition or conditions, said contract would be interpreted and enforced as meaning and being entirely different from what said contract purports on its face to be. That it has been made an issue of fact herein, and the Court finds, that there are expressed plans, objectives, claims and interpretations of the Secretary of Interior as to said contract which the Secretary of Interior and the officers, agents and representatives of the Department of Interior and Bureau of Reclamation of the United States would and will claim to be a part of and inherent in said contract and which would and will be applied and enforced by said Secretary, Department and Bureau if said contract be validated, and this [fol. 276] upon the claim that validation gives binding and final judicial sanction to these expressed plans, objectives, claims and interpretations of the Secretary of Interior.

In this regard the Court finds that under the said alleged contract sought to be validated, the United States, through its Secretary of Interior, the Department of Interior and the Bureau of Reclamation thereof, will assert, enforce and put into effect the following:

(1) That with respect to the use of water in the Central Valley Project and in particular the use of water from the Central Valley Project in plaintiff District, no water therefrom may be used and no right to the use of water therefrom may be had or obtained, except from the United States, and then only upon such terms and conditions as shall be prescribed by the Secretary of Interior.

(2) That under the contract in question, as well as to other similar contracts with other irrigation district within the Central Valley Project, the plaintiff, and such other irrigation districts and/or the landowners therein, do not have and can not obtain and, in fact, will be denied with respect to the use of project water or water carried through project works, any permanent or appurtenant water right.

(3) That the use of water from the Central Valley Project, and in particular the water to be delivered to plaintiff District and other districts within the Central Valley Project, shall be governed exclusively by contracts made between the United States and plaintiff and other districts and that said contract herein sought to be validated and other similar contracts do not and will not give, and in fact do and will negative and deny, any permanent or appurtenant water right and that there is no right of renewal [fol. 277] of said contract upon its termination and that as to any renewal, if granted, it shall be upon such terms and conditions as dictated by the Secretary of Interior.

(4) That the contract in question, and other similar contracts with other irrigation districts within the Central Valley Project, are authorized and provided for under Section 9(e) of that Act of Congress known as the Reclamation Project Act of 1939, and, as so authorized and written, are not repayment contracts, but are so-called "utility-type" contracts which withhold and deny any permanent and appurtenant water right and which authorize the United States to operate within said project in perpetuity as a utility server of water. (This does not relate to distribution system matters in contract.)

(5) That said contract herein sought to be validated, and other similar contracts, (exclusive of local distribution sys-

tem matters) are not repayment contracts and do not provide for any credit to the District or landowners therein upon the repayable costs of the project allocable or allocated to irrigation and to be repaid by water users applicable to agriculture and that the United States may continue in perpetuity to impose and collect charges, (in addition to operation, maintenance, etc.) after the United States has recovered its full costs of the project allocable or allocated to irrigation and to be repaid by water users applicable to agriculture and otherwise. That the plaintiff District and/or its landowners are not entitled to an accounting on the costs of the project or any repayment credits.

(6) That there is no right of renewal of said contract at the end of 40 years, or any other termination of said contract.

[fol. 278] (7) That the Secretary of Interior is authorized and entitled to limit and define the acreage in any one ownership that may receive water within plaintiff District and to withhold and compel the District to withhold water from owners' lands within the District if land in excess of the indicated single ownership acreage is had by any single owner. That the Secretary of Interior is entitled by rule and regulation, as the sole and final determiner of controversies arising under the contract, to determine and provide for the application of rules, regulations and laws relative to residence, occupancy, acreage limitations and forfeiture of land titles to the United States for refusal to abide by alleged acreage controls, and to deny at the discretion of the Secretary of Interior releases of lands and areas being served from restraints and restrictions claimed to exist under reclamation law, such as relinquishment of claimed acreage limitations when allocable or allocated to irrigation and to be repaid by water users applicable to agriculture have been repaid in part or in whole.

(8) That there has been delegated to the Secretary of Interior of the United States by the Legislature of the State of California the right, power and privilege to from time to time, by rule and regulation of the Secretary of Interior and/or by further contract and/or agreement with the board of directors of the plaintiff District and other

milarly affected irrigation districts in California to, in ffect, legislate with respect to the rights of the plaintiff nd other such similar districts and/or the landowners ereof as to the use of water to be delivered to the plain- ff and said other districts from the Central Valley Proj- ct, with particular reference to the manner of levying fol. 279] assessments upon the lands within the plaintiff District and other similar districts; the manner and method f apportioni g and delivery of water to the landowners ithin the plaintiff and other similar districts and that here has been delegated to the Congress of the United tates by the Legislature of California the right, power and rivilege of by congressional legislation from time to time n the future changing, altering and amending the rights of he plaintiff District and the landowners therein and of the arties appearing and interested in this proceeding upon he basis that said delegated right, power and privilege is y said contract and contracts authorized and provided for nd are a part of the rights, powers and privileges of the ecretary of Interior and the Congress of the United States nder said contract without regard to the constitutional or ther unlawful delegation of such powers.

(9) That by virtue of the terms and provisions of said roposed contract Exhibit A, and in particular the provi- ions thereof relative to so-called surplus, seepage, or waste vaters, the plaintiff District and its board of directors will e deprived of the right, power and privilege of distribut- ng, delivering and disposing of the water which it has cquired under the terms of said contract as said District vould be entitled to do under California law, and that as o such purplus, (sic) seepage, and/or waste water, that itle thereto is by said contract vested in the United States o that the United States may control underground waters within said Project.

XXVIII.

That the contract herein sought to be validated in this roceeding does not provide for or recognize the right to fol. 280] acquire a perpetual and appurtenant water right o the use of water upon the part of the plaintiff District

and/or its landowners and does not provide any right of renewal at the end of 40 years, and, in fact, it is the expressed plan and objective of the Secretary of Interior to construe said contract as not giving or allowing a perpetual or appurtenant water right or any right of renewal, even though the waters in process of being appropriated for the benefit of the plaintiff District and the landowners therein be applied to beneficial use thereon.

That it is the expressed plan and objective of the Secretary of Interior to construe and enforce said contract as not providing any credit to the plaintiff District or the landowners within the plaintiff District of any construction cost component in the rates provided to be paid by the plaintiff District to the United States for said water delivered and to construe and enforce said contract as not being a repayment contract providing for the return to the United States treasury of a portion of the construction obligation of said Central Valley Project allocated to irrigation and assigned for return by the said District as provided by the reclamation laws, or to any unit or units of said Central Valley Project used or useful in serving water to the plaintiff District. That it is the expressed plan and objective of the Secretary of Interior to construe and enforce said contract as not being a repayment contract and as not requiring or providing for or allowing any credit on an appropriate share of the fixed charges taking anywise into consideration that part of the construction costs of the works used and useful in the delivery of water to the plaintiff District and which said costs are allocated or allocable to irrigation and to construe, enforce and apply [fol. 281] said contract as not entitling the plaintiff District or the landowners therein to any credit or credits upon construction costs allocable or allocated to irrigation.

XXIX.

It is the expressed plan and objective of the Secretary of Interior to interpret, construe, apply and enforce said contract, if validated, as being a so-called "utility-type" contract, to wit: a contract entitling the United States to keep and maintain the possession of all of the major works and canals of the Central Valley Project in perpetuity and to

deliver water in perpetuity from said Project to the plaintiff District and other irrigation districts and similar public agencies receiving water from said Project, without regard to the laws of the State of California and so as to enable the United States to in perpetuity dictate the terms and condictions (sic) for the delivery of water from said works in said Project and in particular to the plaintiff District, and in doing the foregoing, to deny to the plaintiff District and/or any landowners therein, or other similar districts and landowners therein, any permanent or appurtenant water right or right of renewal of the aforesaid contract.

XXX.

That it is the expressed plan and objective of the Secretary of Interior to interpret, construe, apply and enforce said contract with respect to the matter of limiting and controlling the delivery of water to the plaintiff District from said Project so as to limit the acreage to which water may be delivered to any individual landowner by applying from time to time and under rule and regulation of the Secretary of Interior, acreage and other limitations so as prevent the delivery of water by the Irrigation District to [fol. 282] landowners within the Irrigation District in any instance where a single man owns more than 160 acres within the Central Valley Project, or where a married man and wife own more than 320 acres within the Central Valley Project, or where a man or wife dies and the survivor becomes the owner of more than 160 acres within the Central Valley Project; that the Secretary of Interior contends that the Federal Reclamation Laws contain provisions purportedly authorizing the Secretary of the Interior to impose other limitations as to the use of water under the various provisions of the unrepealed reclamation laws, including provisions thereof requiring residence on or near the land to be served with water and requiring occupancy of the land by the landowner to be served with such water and requiring forfeiture to the United States for the failure or refusal of a landowner to observe the requirements of the Secretary of the Interior with respect to acreage limitations, residence and occupancy; that it is the ex-

[fol. 285] XXXIV.

That the contract herein sought to be validated, if validated and applied, as contended for by the Secretary of Interior and the United States of America, would take private property of the plaintiff District and the landowners therein without due process and without compensation therefor.

XXXV.

That the United States, acting by and through the Bureau of Reclamation of the Department of the Interior, as assignee of the applications to appropriate water herein found to be made by the Department of Finance of the State of California and assigned by said Department to the United States, and by reason of the trustee relationship of the United States relative thereto, is under a duty and obligation to perfect the applications to appropriate water made by the Department of Finance of the State of California and assigned to the United States as herein found, and to perfect the other filings and applications made for the benefit of the Central Valley Project held in the name of the United States, or any of the agencies thereof, so as to enable the State Engineer of the State of California in the exercise of his lawful discretion in accordance with and pursuant to State law to cause appropriate permits and licenses to be issued in connection with such appropriations of water for the use and benefit of the acreages to be served, including in particular the lands within Ivanhoe Irrigation District, and the water users and landowners therein; and that the United States has failed and neglected to perform this duty.

XXXVI.

[fol. 286] That it is true that the portion of the contract herein sought to be validated which relates to the delivery of water as distinguished from the construction of the local distribution system, does not contain any statement of the amount of the share of the construction costs of the Central Valley Project or of the works of the Central Valley Project used or useful in serving water to the plaintiff District and which are or will be required to be repaid to the

United States by the plaintiff District and that said contract does not contain any provisions or terms for crediting to the plaintiff District and/or the landowners therein of any of such costs as may be repaid by the plaintiff District and/or the landowners therein when paying $3.50 per acre foot for class 1 water and/or $1.50 per acre foot for class 2 water. That said contract with respect to the furnishing of water does not contain any provisions relative to consideration of that part of the costs of the Central Valley Project in relation to construction of works connected with water supply and which such costs have been allocated to irrigation. That said contract in that respect is indefinite and uncertain and ambiguous and purports to leave the matter of that part of the construction costs of works connected with water supply and allocated to irrigation to the discretion of the Secretary of Interior and to likewise leave to the discretion of the Secretary of Interior the application or non-application of credits in favor of the plaintiff District and/or the landowners as to that part of the construction costs or works connected with water supply and allocated to irrigation.

That as a matter of fact the Secretary of Interior did make and report to the President and the Congress of the United States a determination with respect to the Central Valley Project of California as follows: The estimated cost of the proposed construction of the Central Valley [fol. 287] Project of California (independent of the cost of construction of local distribution systems) was fixed at $384,314,000.00 made up of the following items: Irrigation, including Contra Costa distribution system and canal capacity for future water, $221,551,600.00; power $104,143,600.00; municipal water and industrial water, $9,091,800.00; navigation, $18,083,000.00; flood control, $31,444,000.00, total allocations $384,314,000.00. That the features of the Central Valley Project included within said costs were and are as follows: Shasta Dam and Reservoir, Shasta Power Plant, Keswick Dam and Reservoir, Keswick Power Plant, Delta Cross-channel, Contra Costa Canal System, Delta-Mendota Canal, Friant Dam and Reservoir, Madera Canal, Friant-Kern Canal, Delta Steam Electric Plant, Transmission System, Water Rights and miscellaneous, Contra Costa

Distribution System. That at said time the Secretary of Interior determined and estimated the costs of the major works of said Central Valley Project, which could and can be properly allocated to irrigation and probably be repaid by the water users, and determined that of the amount aforesaid allocated to irrigation, the farmers should repay and it would be within their ability to repay a sum not exceeding $3.50 per acre foot for class 1 water and a sum not exceeding $1.50 per acre foot for class 2 water and that the total burden to be borne by the farmer for irrigation water delivered canal-side or riverbank-side, including expenses of operation, maintenance and replacement, should not exceed $58,545,475.00 (including $3,074,600.00 for Contra Costa Distribution System). The balance of the costs allocated to irrigation were allocated to be repaid from power revenues, i. e., that is, at said time 27 percent of the cost allocated to irrigation was to be repaid by the farmer and 73 percent of the costs allocated to irrigation was to [fol. 288] be repaid from power revenues and by municipal and industrial water users. The amounts allocated to power were to be repaid by power and the amounts allocated to municipal and industrial water users were to be repaid by such users and the amounts allocated to flood control and navigation were to be borne by the Federal Government as non-reimbursable items.

That the Secretary of Interior and the Congress of the United States did accept said allocations and determinations and said amounts have been fixed as the maximum amounts to be paid by the irrigation water users within said Project for reimbursement to the United States of its properly reimbursable costs allocated to irrigation and to be repaid by the water users. That the plaintiff District and the landowners within the plaintiff District are entitled to have water delivered from said Central Valley Project to said plaintiff District within the framework of said allocated costs and at a charge not to exceed $3.50 per acre foot for class 1 water and $1.50 per acre foot for class 2 water, which payments, after being credited upon reasonable and necessary operating, maintenance, and replacement costs are required to be applied to the plaintiff District's portion of the necessary and reasonable construction costs of the works of the Central Valley Project used or

useful in delivering water to the plaintiff District and when said reasonable and necessary construction costs have been so paid, the plaintiff District is entitled to be free of further construction cost charges and plaintiff District and landowners within the plaintiff District are entitled to an accounting upon the reasonable and necessary construction, operation, maintenance and replacement costs and for the credits to which plaintiff District and the landowners therein are entitled hereunder.

[fol. 289]

XXXVII.

That said contract, Exhibit A, if validated would require and the Secretary of Interior would so apply and enforce said contract, as requiring plaintiff District to assess all lands within the boundaries of said District to pay its obligation to the United States, as well as other District costs, and the lands of the defendant McCracken herein with the other landowners of the District are and would be liable for all such costs and at the same time said contract would be by the Secretary and said plaintiff District enforced as depriving said landowners, notwithstanding such assessments, of their ordinary rights to water as provided by irrigation district law within the State of California, thereby depriving the defendant McCracken and other landowners within the plaintiff District of their property without due process and without compensation.

XXXVIII.

That the defendant Courtney McCracken is now and was at all times herein mentioned and for many years prior hereto has been the owner of 309 acres of land within Ivanhoe Irrigation District. That said defendant has reclaimed and put into a high state of cultivation and production all of his said acreage. That said defendant's land is supplied with water by pumping from wells and through pipelines in a system installed by said defendant and from a water supply owned by said defendant to serve defendant's land from a canal system which is known as the "Wutchunna (sic) Water Company" by virtue of stock ownership by said defendant in said Company and from return and seepage

flow water from higher lands reaching defendant's land and to which defendant is entitled and of which he is the owner by use and right: That the defendant's land within the [fol. 290] District is described as follows: The NW¼ of Section 30, Township 17 South, Range 26 East, M. D. B. & M., comprising 152 acres, more or less, and the NE¼ of Section 5, Township 17 South, Range 25 East, M. D. B. & M., comprising 157 acres, more or less. That 125 acres of said land is improved to grape vineyard and young orange orchard; 160 acres is devoted to annual crops, including vegetables, truck crops and grain, and about 24 acres of said land is hillside pasture land, which said land, except said hillside pasture, is well levefed and readily irrigated from defendant McCracken's own irrigation system and is fertile and capable of producing bountiful crops; that said land has been reclaimed and developed and is being farmed as a unit by means of a unified irrigation system of pumps and surface deliveries and its highest and best use is that of being farmed as a unit.

XXXIX.

That the defendant McCracken protested in writing to the board of supervisors of the County of Tulare against the inclusion of defendant's land or any thereof within the Ivanhoe Irrigation District and said lands were included over his written protest and objection. That since the organization of Ivanhoe Irrigation District the defendant has suggested to the board of directors of Ivanhoe Irrigation District the exclusion of his land from said District, which has been declined.

XL.

That the defendant McCracken has never consented to said contract or the terms or conditions thereof and in particular the provisions and effect thereof herein referred to. That said defendant McCracken was not permitted to vote against the approval of said contract by the District for [fol. 291] the reason that he was not an elector within said District, not being a resident thereof.

XLI.

That the defendant McCracken is the owner of additional lands in other areas within the Central Valley Project, his said holdings in that regard being as follows: The N½ of the NW¼ of the SW¼ and the S½ of the SE¼ of the SW¼ and the E½ of the NW¼ of the NW¼ of Section 33, Township 23 South, Range 26 East, M. D. B. & M., comprising 60 acres, more or less, situated in the Delano-Earlimart Irrigation District, which lands will be served by water from Friant Dam and through the Friant-Kern Canal. That the defendant McCracken is also the owner of a portion of Lot 53 of Mountain View Citrus Tract No. 1, containing 3 acres, more or less, situated in the Orange Cove Irrigation District, which said land is within the Central Valley Project of California and will be served by Project water therefrom.

XLII.

That the defendant McCracken has been advised by the Bureau of Reclamation of the United States, Department of Interior, that in order to obtain any water for his said lands under said contract he will be obligated to sell, or authorize the Secretary of Interior by a recordable contract between the defendant McCracken and the United States, all of his lands in excess of 160 acres and to designate his land not in excess of 160 acres upon which he desires to obtain water, and that without taking such action he will not be delivered any water by the District. That the defendant McCracken does not desire to sell or authorize anyone to sell his lands in excess of 160 acres, nor to designate any 160 acres upon which water shall be delivered [fol. 292] as non-excess land.

XLIII.

That this defendant McCracken is an unmarried man; that he resides near the City of Woodlake, County of Tulare, State of California.

XLIV.

That the lands of the defendant McCracken within the plaintiff District ever since the initial organization of the District have annually been assessed and McCracken has annually paid the annual assessments thereon. That said assessments have annually been levied for the purpose of providing funds to the plaintiff District to meet the orginary (sic) operation and maintenance funds of the District and also to build up and obtain the funds in advance that are called for to be paid by the terms of the contract in question for the advance payment of water annually in advance and to provide funds to meet the annual payments in advance of the due date thereof so as to provide funds for the annual payments upon the distribution system. That the defendant McCracken has paid all such sums but is now being deprived of water for his lands from the District system because of his failure and refusal to select his non-excess land and/or to execute the so-called "recordable contract".

XLV.

The Court finds that with respect to the so-called "acreage limitations" contained in Articles 34, 35 and 36 of said proposed contract, said provisions and each and all of the same relative to the restrictions upon the delivery of water to the so-called "excess lands" and the limitation of acreage in one ownership as in said contract provided are impossible of application, use and/or enforcement and that [fol. 293] the use and/or application and/or enforcement of such provisions is unworkable, impracticable, arbitrary and amounts to the taking of property without due process and without compensation.

XLVI.

That it is true that the provisions of Article 32 of said purported contract herein sought to be validated, if validated, would constitute an unlawful delegation of the power of the board of directors of Ivanhoe Irrigation District, to the United States and to the Secretary of Interior. That it is true that the failure of said contract to designate the

federal reclamation laws to be applied and the federal reclamation laws not to be applicable to said contract and the placing of the Bureau of Reclamation, the Department of Interior and the Secretary of Interior in the position to designate which of said federal reclamation laws are applicable and are not applicable within said contract constitutes an unlawful delegation of the power of the board of directors of Ivanhoe Irrigation District, to the United States and its officers and agents.

XLVII.

That it is true that the sole and entire operations of Ivanhoe Irrigation District are and will be to receive water through the Friant-Kern Canal from the Friant Dam and to distribute such water through the distribution system provided for in said contract and that said District will have no other or additional system or method of operating or for the service of water to the lands within the District. That the provisions of said contract relative to acreage limitations and restrictions upon the delivery of water to the lands within said District would, if validated, constitute an unlawful taking of property without due process and [fol. 294] without compensation and an arbitrary and unwarranted discrimination and unlawful restraint and restriction upon rights of sale, inheritance and testamentary disposition, as well as other property rights.

XLVIII.

That with respect to the portion of the contract having to do with the construction of the distribution system as distinguished from the delivery of water, it is hereby found that said contract is indefinite, uncertain, and lacking in mutuality in that, among other things, the United States purports to agree to construct a local distribution system within the District to conduct and furnish water to the whole of 10,000 acres of irrigable land within said District so that each unit within said 10,000 acres of land comprising not more than 160 acres of land shall have available to each 160 acres of land water from the local distribution system, all at a cost of not to exceed $1,589,807.00. That

pressed plan and objective of the Secretary of the Interior to require a landowner, as a prerequisite to obtaining any water for any of his land within the District to "voluntarily" select the 160 acres if single, or the 320 acres if married, which he will retain from his land holdings in excess thereof, and to refuse and prevent the delivery of water to lands held by a single person in any one ownership in excess of 160 acres, or if married, in excess of 320 acres, until and unless said landowner "voluntarily" signs a recordable contract agreeing to sell the so-called "excess acreage" at a price to be fixed by the Secretary of the Interior, without regard to the availability of water for said land, although enforcing and requiring the Irrigation District to assess all land owned by the individual landowner [fol. 283] within the District as in the case of the assessment of so-called "non-excess lands", and of refusing and preventing the delivery of water to any land within the District in the event that the landowner shall have failed, neglected or refused, or be unable to pay, an annual assessment levied by the District on his said lands, although the landowner may have paid all other charges required by the District for the delivery of water, and to apply provisions of the reclamation law claimed to authorize and entitle the Secretary of Interior to fix the acreage which may be owned by any one person to that area or acreage which the Secretary may deem sufficient for a family-size farm, although less than 160 acres.

XXXI.

That the contract in question contains no statement, criteria, yardstick or requirement for the payment of the maximum amount of money to be payable to the United States for construction costs for the major works used or useful in connection with the Central Valley Project for the delivery of water to the plaintiff District and that the election notice relative to the election held by the plaintiff District for the approval or disapproval of the contract in question does not contain a statement of the maximum amount of money to be payable to the United States for construction purposes relative to any of the major works

of the Central Valley Project used or useful to the delivery of water from said Project to the plaintiff District.

XXXII.

That the Secretary of the Interior contends that the Federal Reclamation Laws contain provisions purportedly authorizing the Secretary of the Interior, under rule and regulation of the Secretary of Interior to be made from time to time to: (1) regulate and require crop practices [fol. 284] within the plaintiff District to be approved by the Secretary; (2) regulate and limit the size of farm units within the plaintiff District to not less than 10 or more than 160 acres; (3) require residence of the landowner upon his land or occupancy thereof by him within the plaintiff District; (4) limit delivery of water to farm units smaller than 160 acres within the plaintiff District; (5) determine the irrigability of land within the plaintiff District, and to otherwise regulate and direct operations within the plaintiff District by the plaintiff District and the landowners therein under the guise of procuring and obtaining the solvency of said Project, all of which would be and are without authority or warrant in either federal or state law and in violation of the rights and interests of the landowners within Ivanhoe Irrigation District and would amount to the taking of property without due process and without compensation.

XXXIII.

That the Water Project Authority of the State of California has made no contract with the United States or any agency thereof by the terms of which the United States is given the possession of said Central Valley Project or the right to make any contract or contracts with individual irrigation districts to be served within said project and that the only contract existing between the Water Project Authority of California and the United States relative to the construction, use, and operation of said Central Valley Project and/or the collection of revenues therefrom and the application of the same to the costs of said Project is as contained im (sic) that certain contract as set forth in paragraph X of these Findings.

XXIII

The provision of said Irrigation District Federal Cooperation Law (State Water Code, Section 23197) authorizing the inclusion of a contractual provision for the delivery and distribution of water under Acts of Congress and the rules and regulations established thereunder, authorizes such delivery and distribution only under acts, rules and regulations as are consistent with generally-applicable State law, and also only under valid Federal statutes, rules and regulations. Under the Constitution of the State of California, and particularly Article XIV thereof, and under the Constitution of the United States and particularly the Tenth Amendment thereto, and under Section 8 of the Reclamation Act of 1902, the United States may not validly impose conditions on the delivery and distribution of water which are inconsistent with State law.

XXIV

Properly construed, the Reclamation Act of 1902, as amended and other Federal laws, do not permit the United States, acting by the Bureau of Reclamation or otherwise, to impose or become a party to a contract containing the provisions and of the character set forth above.

XXV

The contract of September 23, 1949, is invalid and unenforceable for the further reason that the Secretary of the [fol. 310] Interior, pursuant to rule and regulation, may in relation thereto apply numerous unrepealed provisions of the Act of Congress of June 17, 1902, and acts amendatory thereof or supplementary thereto, all collectively styled the Federal Reclamation laws, and generally referred to in the contract as the basis thereof; and that the application to the contract of many of such provisions would adversely and materially affect the contract and the rights of the District and the landowners thereunder.

XXVI

In addition, the contract is in violation of Federal Law in the following particulars:

A. Part A of the contract purports to be a utility contract for the sale of project water, thereby implying that the United States is the owner of said water in violation of Section 8 of the Reclamation Act of June 17, 1902, which provides that the Secretary of the Interior in carrying out the provisions of the act shall proceed in conformity with the laws of the States or Territories relating to the control, appropriation, use or distribution of water in irrigation, or any vested right acquired thereunder.

B. Part A of the contract fails to comply with the repayment provisions of Federal Reclamation laws in not stating the total or any amount to be repaid by the District and its landowners of that portion of the reimbursable costs of the Project allocated to irrigation and assigned for repayment by the water users; and the contract fails to specifically credit any part of the annual rates for water to the repayment of the District's obligation for project construction costs.

C. Part A of the contract is in negation of and does not [fol. 311] afford to the District and its landowners the opportunity to acquire a right to the permanent delivery of project water appurtenant to the land irrigated and all intendments of the contract are that at the end of 40 years no project water will be delivered to the District except in the discretion of the Secretary of the Interior.

D. The provisions of Sections 34, 35 and 36 of the contract relating to excess lands are in violation of Section 8 of the Reclamation Act of June 17, 1902, in that such limitations on the acreage to which water may be delivered is in violation of the laws of the State of California.

XXVII.

Further with respect to Federal law, the contract of September 23, 1949, by its terms and provisions is unenforceable for the reason that it is indefinite, uncertain, misleading and lacking in mutuality regarding the relationship of the parties toward each other with respect to project water and the relative rights and duties of the respective parties in connection therewith, and for the

said contract purports to provide for the construction of a complete distribution system for not to exceed said specified sum of money, which sum, without interest, is to be repaid in 40 equal annual payments, together with additional costs of operation and maintenance of said distribution system. That as elsewhere hereinbefore found, said contract was presented by the United States to the plaintiff District as providing for said completed distribution system at not to exceed said costs and in the notice of election submitting the said proposition to the voters it was specifically represented that the distribution system provision of said contract provided for a system for the delivery of water to each unit of land within said District for a total of 10,000 acres at a cost not to exceed $1,589,807.00. That because of the ambiguity in said contract it was and is now [fol. 295] contended by the United States, and now by the plaintiff District, notwithstanding its representation to the landowners in said notice of election, that the United States is authorized to charge and that the District will be required to pay in addition to said sum of $1,589,807.00 the principal sum of approximately $686,193.00 as additional costs of the construction of said distribution system. It is found that said contract by virtue of said ambiguities and said interpretation on the part of the United States does not contain a statement of the maximum construction costs for said distribution system and that the election notice did not and does not contain such maximum construction costs to be paid to the United States.

WHEREFORE, AND AS CONCLUSIONS OF LAW:

It is determined by the Court that:

I

Under the Constitution of the State of California, and in particular Article XIV, Section 3 thereof, and by the law of the State of California, this State, as sovereign, is vested with title to, ownership and control of all water within the State for and on behalf of the People of the State; it is the policy of this State that the water resources of the State shall be put to beneficial use to the fullest extent of which they are capable; appropriation of water may be made only

for a beneficial use, in accordance with State law, and then only for the duration of such beneficial use; and when such use ceases, the right thereto is forfeited to the State, and the right to the use thereof may again be acquired in the manner prescribed by State law; and the right to the use of water for irrigation shall be appurtenant to the land [fol. 296] irrigated, such right being a form of real property. Under the Constitution of the United States, and in particular the Tenth Amendment thereto, no Federal enactment, rule or regulation may validly override the said provisions and requirements of the State Constitution and law. The Congress of the United States has explicitly so recognized in the Federal Reclamation Act of 1902, Section 8, and other legislation.

II

The United States is not the owner of the water supplied and to be supplied from the Central Valley Project and which is the subject matter of its contract with the District. The interest of the United States in such water is limited in all respects by the law of this State ("law" being hereinafter used to include, unless otherwise indicated, the Constitution, statutes, rules and regulations, and court and administrative decisions of this State). As a storer and carrier of the water delivered from the Central Valley Project, the United States, to the extent that such water may be available, is obligated to deliver such water, to all beneficiaries of said Project within the Sacramento and San Joaquin Valleys, including the plaintiff District and the landowners therein. The United States is obligated to acquire from the State of California, acting through the State Engineer, permits for the use of water sufficient for the purposes of the Central Valley Project, and the use which the United States may make of such water is limited by the condtions (sic) which the State Engineer may impose, under State law relating to the appropriation of water, in any permits which may be issued to the United States for purposes of the Central Valley Project. That nothing contained in these findings and conclusions is intended to or shall in any wise, interfere with, restrict or limit the lawful [fol. 297] discretion of the State Engineer in acting upon

such applications, and in the issuance of permits and licenses pursuant thereto, and in conditioning the same in the public interest.

III

The Ivanhoe Irrigation District is lawfully organized and existing pursuant to the laws of the State of California, but it has the capacity to contract with the Federal Governmet (sic) only to the extent permitted by State law, and any such contract may be validated only if it is consistent with the State law.

IV

In order for the United States to carry out the purposes of the Central Valley Project, particularly the delivery of water therefrom to porject (sic) beneficiaries, including plaintiff District and its landowners, it was and is desirable and expedient that the United States acquire from the State of California the applications to appropriate unappropriated water referred to in Findings X and XII, and also to acquire other applications and said appropriative and other rights to water referred to in Finding XIV, and to perfect all such applications by securing permits pursuant to the laws of the State of California, for the use of all such water by said project beneficiaries, including the plaintiff District and the landowners therein. All rights to the use of water heretofore acquired by the United States for purposes of the Central Valley Project, as well as all rights to the use of water in process of acquisition and to be acquired for such purposes, are held by it in trust for the beneficiaries of said project, including plaintiff District and its landowners, all of whom have a present, vested right to the faithful fulfillment and execution of said [fol. 298] trust. That for the last several years, water has been delivered by the United States Bureau of Reclamation to the plaintiff District for the irrigation of lands within the District, and subject to the laws of the State of California and the discretionary powers of the State Engineer in issuing permits and licenses, said District and its landowners have acquired rights to the use of the appropriated water which rights are vested rights to the use

of said water on said lands, relating back to the date of the filing of the applications to appropriate by the Director of Finance of the State of California, and which rights are appurtenant to said lands, and limited only by conditions lawfully imposed pursuant to the laws of the State of California.

V

Any and all rights to the use of water acquired or to be acquired by the United States for purposes of said project are held in trust and dedicated to carrying out the purposes and objects of said project, including the delivery of said water to plaintiff District and its landowners; and such water is required to be delivered to such lands for use thereon and as appurtenant to the lands irrigated thereby, subject only to conditions lawfully imposed in accordance with State law, and under the burden of repayment to the United States of the reasonable charges for storing and transporting the appropriated water as elsewhere herein set forth.

VI

The State Engineer of the State of California, in accordance with the law of this State, is Chief of the Division of Water Resources, and in his official capacity as State Engineer is authorized and directed by State law to [fol. 299] pass upon all applications to appropriate water and in his lawful discretion to grant or to deny the same, and if granted to issue permits and licenses thereon in accordance with State law. Said State Engineer is required to insert in all such permits and licenses certain terms and conditions concerning the use of water thereunder, and in addition thereto is authorized to include therein terms and conditions which in his judgment are in the public interest relative to the use of water thereunder; and said State Engineer is also authorized to maintain actions to enjoin in appropriate proceedings any waste or unlawful use of water. If and when such permits are issued to the United States pursuant to said applications to appropriate unappropriated waters for the purposes of said project as herein

set forth, the United States will continue to hold such rights recognized thereby solely as trustee, and the beneficial title to such waters will vest in the landowners within the area of said project including those within the plaintiff District.

The owners of any and all lands within the Ivanhoe Irrigation District are entitled to equal rights, without discrimination, to receive water from such project and to apply the same upon their lands, subject only to conditions lawfully imposed in accordance with State law and the payment of charges sufficient to return to the United States its due proportion of the reimbursable and returnable costs of said project.

VII.

The Secretary of the Interior in constructing, operating and maintaining the Central Valley Project was at all times herein subsequent to the initiation of construction of said project by the United States, and now is, under mandate from the Congress of the United States to proceed in ac- [fol. 300] cordance with the laws of the State of California in acquiring rights to the use of water for purposes of said project and to hold and retain such applications, rights and interests not for its own use and benefit but for the use and benefit of the beneficiaries of said Central Valley Project, including plaintiff District and the landowners therein. The true right, title, and interest and ownership of all rights to the use of water acquired or to be acquired by the United States for purposes of said project, immediately upon the acquisition of such rights, gave and do give rise to a resulting trust, with the State of California, as the trustor, the United States, acting through the Secretary of the Interior and the United States Bureau of Reclamation, as trustee, and the landowners contemplated to be served with water by means of such project, including the landowners in plaintiff District as the beneficiaries of such trust; and the United States as trustee for all project beneficiaries has the duty and obligation to perfect its applications to appropriate water in accordance with State law which it has failed and neglected to do, in violation of its trust.

VIII.

The project as authorized, operated and maintained by the United States is a Federal assistance program, and the Secretary of the Interior in expending Federal funds for its construction, operation and maintenance, has so done and is doing so subject to ultimate appropriate repayment by the state, or local districts and agencies thereof, of the reimbursable costs of the project in accordance with the Federal Reclamation laws.

IX.

[fol. 301] The United States has the right, duty and obligation to recover, in accordance with the Federal Reclamation laws, that portion of the reimbursable project construction costs allocated to irrigation and assigned for repayment by the water users, and the District and all landowners therein, including the defendant McCracken, are obligated to pay a proportionate share of the cost of delivery of project water, and a proportionate share of the project construction costs, and in the payments made for such purposes are entitled to credit for that portion of payments which should appropriately be applied to the repayment of project construction costs.

X.

The District and the landowners therein upon the repayment of a proportionate share of the project construction costs are entitled, subject to compliance with State law, including conditions which may be imposed by the State Engineer in permits and licenses to appropriate water, to the continued delivery of project water by the United States as a right appurtenant to all of the District lands at such rates only as may be required to cover the District's proportionate share of costs of operation and maintenance.

XI.

The directors of the District in the management of the affairs thereof, and in the delivery of water made available by the project to the landowners therein, are governed by

the laws of the State of California relating to irrigation districts.

XII.

The District is an organization created and governed by [fol. 302] and for the electors thereof and bears a trust relationship to the landowners therein and in carrying out such trust is obligated by State law relating to irrigation districts, to deliver water received by it from said Central Valley Project to each parcel of land within the District regardless of size thereof, in the proportion that the District assessment on each parcel bears to the entire District assessment on all lands.

XIII.

In dealing with irrigation districts and other users of project water for irrigation, the Legislature of this State may not, consistent with the California Constitution, and particularly Article IV thereof, delegate to Congress the power to legislate relative to the use of such water in contravention of State law, nor authorize the Secretary of the Interior to enforce Federal law relative to the use of project water in contravention of State law.

XIV.

Subject to the rights of the State of California and the Water Project Authority of the State of California, as recited and found in paragraph X of the Findings herein, the United States and the plaintiff District may lawfully enter into a contract for the delivery of water and repayment by said District to the United States of that portion of the Project costs allocated to irrigation and assigned for repayment by the water users, and found by the Secretary of the Interior to be within the ability of the water users to repay. (The remainder of such costs allocated to irrigation to be repaid from power and other revenues.) Said contract may provide for an annual charge by the United States to the plaintiff District, including construc- [fol. 303] tion charges, operation, maintenance and overhead charges on the basis of a sum not to exceed $3.50 per

acre foot for class 1 water and a sum not to exceed $1.50 per acre foot for class 2 water, said sums having been determined to be the maximum charge within the ability of the water users to repay. Such contract must provide for a credit for the payments made by the plaintiff District upon such charges and provide that when such charges have been paid in full no further construction charges shall be collectible from the plaintiff ~~District or landowners~~ therein. The contract may not be the so-called "utility-type", limited term contract contended for by the Secretary of Interior as hereinbefore found, particularly in paragraphs XVI, XVII, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI and XXXII of the Findings of Fact herein.

XV.

The United States may not, by virtue of its physical possession and ownership of the dams, reservoirs and main canals constituting the major works of said Central Valley Project, or by virtue of the possession of any other works necessary or useful in the delivery of stored waters of the Central Valley Project, withhold, waste, or otherwise prevent the application to beneficial use of Central Valley Project waters, but is obligated to conform to the laws of the State of California relative to the control, appropriation, use and distribution of the waters of the Central Valley Project, and in that connection is required to permit such water to be put to beneficial use in accordance with the laws of the State of California and to recognize any and all vested rights. The United States is and shall be subject to the jurisdiction and direction of the State Engineer of the State of California as the executive officer [fol. 304] of the Division of Water Resources of the Department of Public Works of the State of California as prescribed by the laws of said State in respect to acquisition of rights to the use of water by appropriation, and respecting the use of such water, and that any and all rights to the use of water acquired or to be acquired by the United States for purposes of said Project are dedicated to carrying out the purposes and objects of said Project, including the delivery of said water to plaintiff District and its landowners, and such water is and will be required

to be delivered to such lands as appurtenant to the lands irrigated thereby, subject only to conditions lawfully imposed in accordance with State law, and burdened only with the payment to the United States of the reasonable and appropriate charges in repayment of its reasonable and necessary construction, operation, maintenance and replacement costs.

XVI

The plaintiff District and the landowners therein are entitled, subject to the rights and interests of the State of California and its agencies, as recited and found in paragraph X of the Findings herein, to a contract for the delivery of water by the United States to all lands within the plaintiff District, which contract shall recognize and provide for a permanent and appurtenant water right, subject only to continued beneficial use and a fixed maximum charge to be paid by the plaintiff District for the plaintiff's share of the construction costs of the major works of the Central Valley Project used or useful in the delivering of water to the plaintiff District, as such costs have been allocated to irrigation and assigned for repayment by the water users within their ability to repay same, and in which contract a credit to the District upon such [fol. 305] costs and a manner and method of accounting for such credit is provided for, and from which contract the features of the present contract herein sought to be validated which are herein found and concluded to be illegal and objectionable, including said acreage limitations, are eliminated.

XVII

It must be presumed, and is found and concluded, to have been determined by the Secretary of the Interior, that to the extent water may be available to the United States for such purposes, the plaintiff District and its landowners, subject to the discretionary powers of the State Engineer in issuing permits and licenses to appropriate water as herein found and concluded, are entitled each year, under an appropriate contract, to not less than the quantities of Class 1 and Class 2 water as specified in Part A of the pur-

ported contract; and pursuant to the same presumption, finding and conclusion, that the charges specified in Part A of the purported contract contain a component for the return by plaintiff District of some part of its proportionate share of Project construction costs, and that such charges, pursuant to an appropriate contract, are reasonable and within the ability of plaintiff District and its landowners and are adequate to repay to the United States, each year, an appropriate share of necessary construction, operation and maintenance costs.

XVIII

The following provisions of the said contract of September 23, 1949, are invalid and unenforceable because they conflict with State law, including in particular the State Constitution, Article XIV, Section 3, and the State Water [fol. 306] Code, Sections 22077, 22250, 22259, 26700-26993.

A. Article 26 of the contract, purporting to condition the delivery of water upon the payment of void assessments.

B. Article 28 of the contract, purporting to impose a penalty unknown to California law with respect to land which is in default in payments to the District although the latter is not in default in its payments to the United States.

C. Article 12(b) of the contract, purporting to forbid the District from disposing of surplus water outside the District.

D. Article 15(c) of the contract, purporting to reserve to the United States the right to all waste, seepage and return flow which escapes or is discharged beyond the District's boundaries.

E. Article 17 of the contract, purporting to forbid the District from delivering or furnishing any water required under the contract for other than agricultural purposes.

F. Article 32 of the contract, purporting to forbid the District from making any change in its boundaries, such as by the inclusion or exclusion of lands.

G. Articles 34, 35 and 36 of the contract, purporting to forbid the District from furnishing water made available under the contract to any land in excess of 160 acres, held by any single beneficial owner, unless the owner complies with certain further requirements, including the sale of all land in excess of said 160 acres at prices not in excess of those approved by the United States Secretary of the Interior.

H. Articles 25 and 27 of the contract, purporting to hold all lands within the District subject to an *ad valorem* tax [fol. 307] to defray the charges imposed upon the District by the contract, notwithstanding the provisions of Articles 34, 35 and 36 of the contract, above mentioned, prohibiting the furnishing of water to land in excess of said 160 acres.

XIX.

The contract of September 23, 1949, is further invalid under State law, including the State Constitution, Article XIV, Section 3, for the following reasons:

A. Neither the contract, nor the notice of election which preceded it, contains or contained any statement of the maximum amount of money to be payable to the United States for construction purposes and cost of water supply and acquisition of property, nor any provision for the crediting of the payments to be made under such contract to the cost of the Project. In this respect the contract conflicts with the State Water Code, Section 23223.

B. The contract does not provide for or recognize a water right appurtenant to the lands within the District, but negates such right and instead contemplates and permits a continuing power in the Federal Government to furnish or withhold water at the end of the contract period upon such terms and conditions as the United States may then impose.

C. The contract further is contrary to State law in that it purports to deprive the lands within the District, and particularly the lands of said Courtney McCracken and those similarly situated, of water rights recognized under State law.

XX.

With respect to the provisions of said contract having to [fol. 308] do with the so-called "distribution system," the contract and provisions thereof are invalid and void, among other things, for the reason that said contract is indefinite, uncertain; ambiguous and lacking in mutuality and that the election notice calling the purported special election for the approval of said contract did not and does not conform to the requirements of the laws of the State of California for such notice, and in that said election was not legally and fairly conducted, but was illegally called, held and conducted for the reasons more particularly recited in the Findings herein.

XXI.

The contract of September 23, 1949, is invalid and unenforceable for the further reason that numerous of its provisions, purporting to vest an uncontrolled discretion in the Secretary of the Interior, are so ambiguous, indefinite, uncertain and lacking in mutuality as to deny the basis of any contractual undertaking recognized by State law, and in particular the State Water Code, Section 23195.

XXII.

Further with reference to Conclusion XIII above, the Irrigation District Federal Cooperation Law, enacted by the State in 1917, and codified as a part of the State Water Code in 1943, does not exempt from the application of State law, as above declared and applied, the contract of September 23, 1949. Said law authorizes contracts between irrigation districts, including the Ivanhoe Irrigation District, and the United States, but the validity of any such contract must be measured by its consistency with generally-applicable State law. Said law does not purport to, and under Article IV of the California Constitution [fol. 309] could not validly, authorize contracts which are inconsistent with generally-applicable State law or delegate to the Federal Government the power to legislate in behalf of the State. The provisions of the contract above referred to, even if warranted under Federal legislation, are not authorized by State law, which controls.

reason that it denies to the District and its landowners the assurances required of the United States in its trustee relationship toward Project beneficiaries with regard to the rights of the District and its landowners to a permanent supply of project water appurtenant to the land irrigated.

XXVIII

That said contract with respect to the provisions thereof having to do with the delivery of water by the United States to the plaintiff District from Central Valley Project is invalid and void and is contrary to the Federal Reclamation laws and to the laws of the State of California, among other things, in the particulars recited, found and set forth in [fol. 312] the Findings herein, particular reference being here made to paragraphs X, XI, XII, XIII, XIV, XVI, XVII, XX, XXI, XXII, XXV, XXVI, XXCII, (sic) XXCIII, (sic) XXIX, XXX, XXXI, XXXII, XXXIV, XXXV, XXXVI, XXXVII, XLV and XLVI.

XXIX

If the contract of September 23, 1949, could be held to be permitted or required under State and Federal law, or either, such law, for the reasons and in the particulars set forth in Conclusions XVIII, A-H, inclusive, XIX, A-C, inclusive, XX, XXI, XXIV, XXV, XXVI, A-D, inclusive, XXVII and XXVIII, above, would be and is unconstitutional, and would be and is also unconstitutional in its application to the Ivanhoe Irrigation District and to Courtney McCracken and other landowners therein similarly situated and to all landowners of land in the District, in denying them and each of them the equal protection of the laws and due process of law under Article I, Sections 1, 13 and 14 of the California Constitution, and the Fifth Amendment and the Fourteenth Amendment, Section 1, of the United States Constitution. This conclusion independently follows under either of said Constitutions and under each such provision thereof.

XXX

If the contract of September 23, 1949, could be held to be permitted or required under Federal law, such law, for the

reasons and in the particulars heretofore set forth in these Conclusions, would be and is unconstitutional, and would be and is also unconstitutional in its application to the Ivanhoe Irrigation District and to Courtney McCracken and other landowners therein similarly situated, and to all [fol. 313] landowners of land in the District, under the United States Constitution, and in particular the Tenth Amendment thereto.

XXXI

Part A of the contract, including the provisions limiting the term thereto to 40 years, is inseparable from Part B thereof, providing for a major and permanent investment by the District in connection with the construction of a distribution system by the United States within the District for the distribution of project waters to lands within the District, and the invalid provisions of the contract materially affect and are inseparable from other provisions of the contract.

XXXII

A validation of the contract would render the status and relationship of the parties toward each other, respecting water to be furnished by said Project, confused and uncertain and would be prejudicial to the material rights and interests of the District and its landowners in and to the subject matter of the contract both during the term of the contract and upon its termination.

XXXIII

It is and would be unlawful and would cause irreparable harm and damage to plaintiff District and landowners therein for the plaintiff District, its board of directors, or the officers, agents, servants or employees of said District, or any of them, directly or in collaboration with others, to cause or permit the incurring of any obligation or liability upon the part of the plaintiff District or the landowners therein in connection with the foregoing contract, or any part thereof, or to cause or permit any work of [fol. 314] construction to be done in or upon said proposed

distribution system, under said contract in such manner as to incur any liability upon the part of said District or the landowners therein, and any such acts or conduct hereinafter declared to be unlawful should be enjoined. The delivery of water by the United States to the plaintiff District at charges not to exceed $3.50 per acre foot for class 1 water and $1.50 per acre foot for class 2 water and the collection of funds therefor and payment for the costs thereof by the plaintiff District to the United States should not be enjoined.

XXXIV

The court further concludes that the contract of September 23, 1949, between the Ivanhoe Irrigation District and the United States of America, acting by the Bureau of Reclamation, is invalid and unenforceable. This conclusion follows and is based upon the facts found and set forth herein, and upon each fact as found by the court, and is independent of any other of the conclusions, or portions thereof.

XXXV.

There should be entered a permanent injunction, enjoining the Ivanhoe Irrigation District, its officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, from performing or taking any action to perform in behalf of the District the purported contract of September 23, 1949, and from failing or refusing to supply said defendant Courtney McCracken with water for irrigation purposes, with respect to all of his land within said District, upon the same terms and conditions tendered to all other landowners within the District, without discrimination on the [fol. 385] basis of the extent of his holdings of land within the District or any other basis; and affirmatively requiring said District to deliver water to said Courtney McCracken without such discrimination.

XXXVI

The State Engineer is authorized and obligated to proceed diligently with the issuance of permits upon the ap-

plications now held by the United States for the Benefit of the Central Valley Project, incorporating therein such terms and conditions as may be validly imposed within his discretion under the laws of the State of California. In the circumstances of this case, the failure of the United States to secure such permits has not, and may not be deemed to have, impaired the vested rights acquired by the Ivanhoe Irrigation District and the landowners therein, including the defendant McCracken, to the continued use of the project waters. Pending the issuance of permits, limited by such terms and conditions as the State Engineer may lawfully impose, said District and its landowners may continue as of right to receive and put to beneficial use such project waters.

Let judgment be entered accordingly.

Dated this 27th day of February, 1953.

Benjamin C. Jones, Judge of the Superior Court, assigned.

[fol. 316]. IN SUPERIOR COURT OF TULARE COUNTY

No. 39627

JUDGMENT—February 27, 1953

In the above entitled matter, appearances having been made and issues having been joined, and the cause having been tried and the matter submitted to the Court, and the Court having arrived at its decision and directed that Findings of Fact and Conclusions of Law be drawn, and such Findings of Fact and Conclusions of Law having been prepared and served, and objections to said proposed Findings of Fact and Conclusions of Law having been served and filed, and the matter of settling the Findings having been set down for hearing, and the matter having been argued, and the Court having settled said Findings of Fact and Conclusions of Law, and the same having in writing been duly signed and filed herein,

Now, Therefore, and upon and in accordance with the facts found in said written Findings of Fact adopted by the Court and upon and in accordance with the Conclusions of Law settled and filed by the Court herein, it is hereby Ordered, Adjudged and Decreed as follows:

1. That the contract between plaintiff District and the United States, attached to the complaint herein and designated as Exhibit A, dated September 23, 1949, is invalid, void, and without force or effect.

2. That Plaintiff District, its directors, officers, agents, servants, employees, attorneys and those persons in active concert or participation with them, or any of them, who receive actual notice of this judgment by personal service or otherwise, be, and they are hereby, permanently en- [fol. 317] joined from performing or taking any action to perform in behalf of said District the said contract or any part thereof and further enjoined from causing or permitting any work of construction to be done in or upon said proposed distribution system, under said contract, in such manner as to incur any liability upon the part of said District or the landowners therein.

3. That the Plaintiff District, its directors, officers, agents, servants, employees, attorneys and those persons in active concert or participation with them, or any of them, who receive actual notice of this judgment by personal service or otherwise be, and they are hereby, permanently enjoined from failing or refusing to supply defendant Courtney McCracken with water for irrigation purposes, with respect to all of his land within said District, upon the same terms and conditions tendered to all other landowners within the District, without discrimination by reason of the extent of his holdings of land, or on any other basis inconsistent with the findings of fact and conclusions of law signed and filed herein.

4. That the State Engineer is authorized and obligated to proceed diligently with the issuance of permits upon the applications now held by the United States for the benefit of the Central Valley Project, incorporating therein such terms and conditions as may be validly imposed within

his discretion under the laws of the State of California. Pending the issuance of such permits, the Ivanhoe Irrigation District and the landowners therein, including the defendant McCracken, may continue as of right to receive and put to beneficial use the Project waters.

[fol. 318] 5. Defendants appearing herein are entitled to their costs.

Dated: February 27th, 1953.

Benjamin C. Jones, Judge of the Superior Court, assigned.

[fol. 319] [File endorsement omitted]

[fol. 320]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

L. A. No. 23043

THE IVANHOE IRRIGATION DISTRICT, Plaintiff and Appellant,

v.

ALL PARTIES and PERSONS, ETC., Respondents,
THE STATE OF CALIFORNIA, Defendant and Appellant,
COURTNEY McCRACKEN, Defendant and Respondent.

NOTICE OF APPEAL BY THE IVANHOE IRRIGATION DISTRICT AND THE STATE OF CALIFORNIA TO THE SUPREME COURT OF THE UNITED STATES—Filed April 23, 1957

I

Notice is hereby given that the Ivanhoe Irrigation District and the State of California, the appellants above named, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of California affirming the judgment of the Superior Court in and for the County of Tulare, State of California, which declared invalid that certain contract between the

Ivanhoe Irrigation District and the United States dated September 23, 1949. The opinion of the Supreme Court of the State of California was filed on January 24, 1957; rehearing was denied by that Court on February 19, 1957. [fol. 321] This appeal is taken pursuant to 28 U.S.C.A. section 1257(1).

II

The Clerk of the Supreme Court of the State of California will please prepare a transcript of the record in this proceeding for transmission to the Clerk of the Supreme Court of the United States. He shall include in said transcript the following:

1. The record, consisting of Clerks Trans. (2 vols.), Supp. Clerks Trans. (1 vol.), Reporters Trans. (7 vols.), heretofore filed with the Supreme Court of the State of California on the appeal to said Court.
2. The opinion by the California Supreme Court in this proceeding filed January 24, 1957.
3. The petition to the California Supreme Court by the State of California for a rehearing filed February 6, 1957, the answers thereto, all the *amicus curiae* briefs filed in support thereof or opposition thereto, and the answers to such *amicus curiae* briefs.
4. The order of the California Supreme Court of February 19, 1957, denying a rehearing.
5. This Notice of Appeal.

III

The questions presented by this appeal all relate to the validity of the previously identified contract between the United States and the Ivanhoe Irrigation District, an [fol. 322] agency of the State of California, providing for delivery of a water supply to the District from the federal Central Valley Project, and the expenditure and repayment of funds for construction of a distribution system by the United States to distribute this water supply within the District.

These questions are as follows:

1. Section 46 of the *Omnibus Adjustment Act of 1926* (44 Stat. 649 (1926), 43 U.S.C. section 423e (1952)) precludes delivery of water from federal reclamation projects to land held in private ownership by any one owner in excess of 160 irrigable acres unless certain conditions are met.

   (a) Does this section apply only to public lands of the United States or does it also apply to lands in private ownership?

   (b) Is this section valid or does it deprive owners of more than 160 acres of land in federal reclamation projects in California of property without due process of law, and does it deny them equal protection of the laws?

   (c) The California *Irrigation District Federal Cooperation Law* (Calif. Water Code sections 23175 *et seq.*) provides for the delivery and distribution of water acquired under any contract with [fol. 323] the United States "under the relevant acts of Congress" (*id.* section 23197(a)), and "in accordance with the applicable acts of Congress" (*id.* section 23200). Is this section 46 one of the "relevant" and "applicable" acts of Congress referred to in the California *Irrigation District Federal Cooperation Law?*

   (d) Does the application of this section 46 depend in any way on whether "the title to the water to be purveyed is [or is] not an unlimited title in the United States?"

   (e) Does section 8 of the *Reclamation Act of 1902* (32 Stats. 390 (1902), 43 U.S.C. sections 372, 383) require the United States to deliver water in accordance with a trust under state law, assuming such trust would prevent the imposition of the limitation in this section 46?

2. Does the validity of the contract involve consideration of the water rights of anyone and particularly of the United States?

3. Is the United States a party to this proceeding?

4. If the United States is not a party, did the courts of California have jurisdiction to determine:

[fol. 324] a. What water rights or title the United States has acquired?

b. What sort of water rights the United States could acquire in California, whether from the State of California or from others?

5. Can a trust imposed on water rights pursuant to State law prevent the United States from acquiring the water rights it needs to accomplish a federal purpose?

6. Are the rights of the beneficiaries under the trust declared to exist by the California Supreme Court property rights within the meaning of the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution?

7. Assuming the rights referred to in the preceding question are property rights within the meaning of the United States Constitution, does the 160 acre water limitation in section 46 of the *Omnibus Adjustment Act of 1926* deprive the owners thereof of those rights?

8. Does federal law provide that upon repayment the district must be granted title to "works for the storage and distribution of water to and by the district" . . . "not dependent on a future and neces-[fol. 325] sarily discretionary act of Congress?"

9. Does federal law require that the contract specify an obligation for construction of storage and delivery works (other than local distribution systems for the use of individual districts) to be repaid in 40 years?

10. Does section 8 of the *Reclamation Act of 1902* submit the United States to the provisions of State law regulating public utilities where Congress by section 9(e) of the *Reclamation Project Act of 1939* has

provided a system of regulation for federal projects which may be inconsistent with the State system?

11. Section 9(e) of the *Reclamation Project Act of 1939* (53 Stat. 1196 (1939), 43 U.S.C. section 485h(e) (1952)) authorizes the Secretary of the Interior to enter into contracts to furnish water for irrigation purposes from federal reclamation projects. The term of such contracts is not to exceed forty years.

(a) Does this section authorize the United States at its discretion to discontinue water service at the end of the contract term?

(b) If it does, does it impose upon landowners a [fol. 326] burden "under which they may suffer the loss of water rights at the discretion of the United States" so that it is "contrary to well established constitutional principles and protections"?

Dated: April 22, 1957.

Edmund G. Brown, Attorney General of the State of California, B. Abbott Goldberg, Deputy Attorney General, Adolphus Moskovitz, Deputy Attorney General, 600 State Building, San Francisco 2, California, Attorneys for Appellants, The State of California and The Ivanhoe Irrigation District,

By Adolphus Moskovitz.

fol. 327] Affidavit of Service (omitted in printing).

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fol. 329] Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 1]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF MADERA

No. 8502

MADERA IRRIGATION DISTRICT, Plaintiff,

v.

ALL PERSONS having or claiming to have any interest in the contract entered into on the 14th day of May, 1951, between the MADERA IRRIGATION DISTRICT and the UNITED STATES, providing for a water supply for the MADERA IRRIGATION DISTRICT from the Friant Dam, and the construction of a distribution system in said District, and for payment by said District to the United States, Defendants.

SECOND AMENDED COMPLAINT—Filed October 26, 1951

Comes now Madera Irrigation District, plaintiff above named, and files this its Second Amended Complaint, and for cause of action alleges:

I.

That the plaintiff is an irrigation district duly organized and existing under the provisions of the Water Code of the State of California; that the Board of Directors of said District has its office in the County of Madera, State of California.

II

That on the 14th day of May, 1951, the plaintiff entered into a contract in writing with the United States, a true [fol. 2] copy of which said contract is hereto annexed and marked Exhibit "A", and is hereby incorporated by reference in this complaint.

III

That the said contract was approved as a proposed contract by the Board of Directors of said plaintiff district on the 29th day of January, 1951, and by the Secretary of the Interior on the 5th day of February, 1951; that thereafter the said proposed contract and the plan of the project, including a copy of the estimate of cost and the engineers' report, was submitted to the California District Securities Commission for its examination and report; that on the 26th day of March, 1951, the said Commission made its report approving the said contract.

IV

That a true copy of the contract executed by and between the Madera Irrigation District and the United States on May 24, 1939, assigned symbol and number Ilr-1126 and entitled "Contract for Purchase of Property and Water Rights", referred to in the contract mentioned in Paragraph II hereof, is attached to this Second Amended Complaint and marked Exhibit "B" and is hereby incorporated herein and made a part hereof.

V

That on the 18th day of April, 1951, the Board of Directors of plaintiff district called a special election to be held on the 9th day of May, 1951, for the purpose of sub-[fol. 3] mitting the said proposed contract to the voters of the Madera Irrigation District for their approval; that the said Board of Directors caused a notice of said election to be published in The Madera Daily News-Tribune, a newspaper published in the County of Madera, once a week for three successive weeks before the said election, and like notices posted in three public places in each election precinct in the District for twenty days before said election; that a true copy of said notice is hereto annexed and marked Exhibit "C" and is hereby incorporated by reference herein and made a part hereof; that the said election was duly and regularly held as provided in the said notice; that the ballots at the said election contained a brief statement of the general purpose of the contract, substantially as stated

in the notice of election, and the extent of the obligation to be assumed, with the words "Contract—YES", and "Contract —No"; that more than two-thirds of the ballots cast at said election were in favor of the said contract; that on the 14th day of May, 1951, the Board of Directors of said District met at the District office and canvassed the returns from said election, and declared the result thereof, and that the said contract was approved.

VI

That the said election was conducted fairly and in all respects according to law, and that the result of said election was the approval of said contract by the voters of [fol. 4] the said District.

Wherefore, plaintiff prays that the validity of said contract mentioned in Paragraph II hereof, and the authority of the District to make said contract, be determined by the Court, and that the said contract be adjudged and declared to be valid.

David E. Peckinpah, Denver C. Peckinpah, Harold M. Child, L. N. Barber, By David E. Peckinpah, Attorneys for Madera Irrigation District.

Duly sworn to by Hugh G. Rodgers, jurat omitted in printing.

* * * * * * *

[fol. 5] Affidavit of service (omitted in printing).

[fol. 6] EXHIBIT "A" TO SECOND AMENDED COMPLAINT

Approved W.O. 3/27/50
Rev. Appr. W.O. 2/6/51

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Central Valley Project, California

CONTRACT BETWEEN THE UNITED STATES AND THE MADERA IRRIGATION DISTRICT FOR WATER SERVICE AND CONSTRUCTION OF A DISTRIBUTION SYSTEM

Table of Contents

Article No.	*Title*
	Preamble
	Explanatory Recitals
1	Definitions
[fol. 7] 2	Amendment of Article 14 (a) of 1939 Contract
PART A:	
3	Term of Part A of Contract
4	Purchase Contract of May 24, 1939
5	Water to be Furnished to District
6	Time for Delivery of Water
7	Rate and Method of Payment for Water
8	Adjustments for Class 2 Water
9	Point of Delivery, Measurement and Responsibility for Distribution of Water
10	United States Not Liable for Water Shortage
11	Use of Water Furnished to District
PART B:	
12	Construction of Works and Limit of Expenditures Therefor
13	Payment by District
14	Development Period
15	Estimated Cost of Operation and Maintenance to be Paid in Advance

16 Transfer of Operation and Maintenance to District—United States to be Held Harmless
17 District to Pay Certain Miscellaneous Costs Relating to Transferred Works
18 Computation of Costs

END OF PART B

19 Agreed Charges a General Obligation of the District
20 All Benefits Conditioned Upon Payment
21 Levy of Taxes and Assessments—Fixing of Rates and Tolls
[fol. 8] 22 Refusal of Water in Case of Default
23 Penalty Upon Delinquency in Payment
24 District to Keep Books and Records and Report Crop and Other Data
25 Inspection of Books and Records
26 Changes in Organization of District
27 Title to Remain in the United States
28 Land Not to Receive Service from Distribution System or Water Furnished to District by United States Until Owners Thereof Execute Certain Contracts
29 Valuation and Sale of Excess Lands
30 Excess Lands
31 Amendment of Federal Reclamation Laws
32 Contingent Upon Appropriations or Allotments of Funds
33 Officials Not to Benefit
34 Notices
35 Assignment Prohibited: Successors and Assigns Obligated: Default
36 Assurance Relating to Validity of Contract
37 Performance of Work with Contributed Funds
38 Nondiscrimination

Approved W. O. 3-27-50
Rev. Appr. W. O. 2-6-51

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Central Valley Project, California

[fol. 9] CONTRACT BETWEEN THE UNITED STATES AND THE MADERA IRRIGATION DISTRICT FOR WATER SERVICE AND CONSTRUCTION OF A DISTRIBUTION SYSTEM

THIS CONTRACT, made this 14th day of May, 1951, in pursuance generally of the Act of Congress approved June 17, 1902 (32 Stat. 388), and all acts of Congress amendatory thereof or supplementary thereto, collectively herein styled the "Federal reclamation laws," and the laws of the State of California, with particular reference to those implementary of the Federal reclamation laws, between the UNITED STATES OF AMERICA, hereinafter styled the "United States," and the MADERA IRRIGATION DISTRICT, herein styled the "District," a political subdivision of the State of California, duly organized, existing, and acting pursuant to the laws thereof, with its principal place of business in the City of Madera, State of California.

WITNESSETH, THAT:

EXPLANATORY RECITALS

WHEREAS, the United States is constructing the Central Valley Project for the storage, diversion, carriage, distribution, and beneficial use of water for flood control, irrigation, municipal, domestic, and industrial uses, the generation and distribution of electric energy, salinity control, navigation, and other purposes, of the waters of the Sacramento River and the San Joaquin River and their tributaries; and

[fol. 10] WHEREAS, the District and the United States, on May 24, 1939, executed a contract assigned symbol and number Ilr-1126 and entitled "Contract for Purchase of Prop-

erty and Water Rights," under the terms of which the District, subject to the terms and conditions therein set forth, became entitled to purchase from Friant Dam and Reservoir, a feature of the Central Valley Project, a permanent supplemental supply of Class 1 and Class 2 water in an aggregate average annual amount up to, but not in excess of, two hundred and seventy thousand (270,000) acre-feet which, at the option of the District, should include up to, but not exceed, fifteen percent (15%) of the total amount of Class 1 water as therein defined; and

WHEREAS, under the terms of an agreement dated August 24, 1949, concurred in by the Acting Secretary of the Interior on September 16, 1949, the District assigned to the Chowchilla Water District a portion of the District's right to purchase said water acquired under the aforesaid contract of May 24, 1939, to-wit: an average annual supply of fifty-two thousand (52,000) acre-feet which, at the option of the said Chowchilla Water District, shall include up to, but not exceed, three and seventy-five one-hundredths percent (3.75%) of the total amount of Class 1 water as said Class 1 water is defined in the contract of May 24, 1939, and reserving to the District the right to purchase, as aforesaid, an aggregate average annual supply of Class 1 and Class 2 water in the amount of two hundred and eighteen thousand (218,000) acre-feet which, at the option of the [fol. 11] District, shall include up to, but not in excess of, eleven and twenty-five one-hundredths percent (11.25%) of Class 1 water as defined in the contract of May 24, 1939; and

WHEREAS, the United States on February 6, 1951, consented to the exclusion of approximately nineteen thousand five hundred (19,500) acres of land from the District subject to a further reduction of the amount of water which the District will be entitled to purchase from Friant Dam and Reservoir pursuant to the aforesaid contract of May 24, 1939, as modified by the assignment of August 24, 1949; and

WHEREAS, the District excluded said nineteen thousand five hundred (19,500) acres of land and it is the intention

of the parties hereto that the aforesaid reduction be effected by appropriate provision in this contract; and

WHEREAS, the District desires to contract for the purchase and the United States desires to contract for the furnishing to the District of the said quantity of water which the District is now entitled to purchase under the 1939 contract subject to the terms and conditions contained in said 1939 contract, and the Federal reclamation laws, and the laws of the State of California, and for which the District will make payment to the United States upon the bases, at the rates, and pursuant to the conditions hereinafter set forth; and

WHEREAS, investigations of the stream flow of the Sacramento River and San Joaquin River and their tributaries [fol. 12] indicate that there will be available for furnishing to the District by means of works constructed and planned to be constructed by the United States, the amount of water which the District is now entitled to purchase under the 1939 contract, for surface diversion and direct application for irrigation and directly and indirectly to replenish depleted ground-water underlying the District; and

WHEREAS, in said 1939 contract it was provided, among other things, that the District would convey to the United States the land comprising Friant Dam site, certain gravel-bearing lands therein described and all of the District's right, title, and interest in and to all of the District's water rights on the San Joaquin River and its tributaries, excepting those tributaries which drain into the said river below Mendota Dam, located in Section 19, Township 13 South, Range 15 East, M.D.B.&M., in order that the United States might construct and operate that feature of the Central Valley Project commonly known and called Friant Dam and Reservoir and, in consideration of the said conveyances by the District, the United States agreed, among other things, to construct the Madera Canal as described in said 1939 contract and subject to the terms and conditions therein set forth; and

WHEREAS, the United States recognizes that the District in contracting to transfer and surrender its properties and

rights hereinabove referred to relied upon its right to purchase a permanent supplemental supply of water from [fol. 13] Friant Dam and Reservoir and the agreement that the United States would construct the facilities described subject to the terms and conditions set forth in the 1939 contract; and

WHEREAS, under the circumstances aforesaid the property transferred by the District was no longer necessary to be retained by it for the uses and purposes of the District and it was therefore unnecessary for the District to proceed with its own project for the development of Friant Dam and Reservoir; and

WHEREAS, the United States has now constructed and proposes to operate the Madera Canal, as well as other features of the Central Valley Project now being constructed or planned for construction, in part, for the furnishing of the water which the District is now entitled to purchase pursuant to the 1939 contract; and

WHEREAS, Part A of this contract is being executed by the District in pursuance of the aforesaid rights of the District acquired under the 1939 contract; and

WHEREAS, the District, in order to utilize the water supply to be made available from the Central Valley Project under Part A of this contract and such future contracts as may be made between the United States and the District, desires that a general distribution and lateral system be constructed for the District by the United States, acting by and through the Bureau of Reclamation, United States Department of the Interior, pursuant to the Federal reclamation laws; and

[fol. 14] WHEREAS, the United States is willing to undertake the construction of the aforementioned general distribution and lateral system under the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed by the parties hereto as follows:

DEFINITIONS

1. Wherever used herein, unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the term:

(a) "Secretary" or "contracting officer" means the Secretary of the United States Department of the Interior or his duly authorized representative;

(b) "Project" means the Central Valley Project, California, of the Bureau of Reclamation, United States Department of the Interior;

(c) "initial delivery date" means the date announced by the Secretary on which water first will be available for furnishing to the District by means of the Madera Canal pursuant to Part A of this contract;

(d) "calendar year" means the period from January 1 through December 31, both dates inclusive;

(e) "Year" means the period from and including March 1 of each calendar year through the last day of February of the following calendar year;

[fol. 15] (f) "Part A" means article 3 through article 11;

(g) "Part B" means article 12 through article 18;

(h) "contract" means article 1 through article 38;

(i) "1939 contract" means the contract of May 24, 1939, symbol and number Ilr-1126, between the United States and the Madera Irrigation District and entitled "Contract for Purchase of Property and Water Rights," as modified by the assignment of August 24, 1949, from the District to the Chowchilla Water District;

(j) "Class 1 water" means that supply of water at Friant Dam and Reservoir which, subject to the contingencies described in article 10 hereof, will be available for delivery from the Friant-Kern and Madera Canals and the San Joaquin River as a dependable water supply during each irrigation season;

(k) "Class 2 water" means that supply of water which becomes available in addition to the supply of Class 1 water and which, because of its uncertainty as to availability and time of occurrence, will be undependable in character and will be furnished only if, as, and when said water is available as determined by the United States.

AMENDMENT OF ARTICLE 14 (a) OF 1939 CONTRACT

2. Article 14 (a) of the 1939 contract is hereby amended as follows:

(i) By deleting therefrom the figure "270,000" and [fol. 16] inserting, in lieu thereof, the figure "172,000", and

(ii) By deleting therefrom the words and figures "fifteen percentum (15%)" and inserting, in lieu thereof, "ten and sixty-five hundredths per centum (10.65%)."

PART A

TERM OF PART A OF CONTRACT

3. This contract shall become effective upon its execution and Part A shall remain in effect for a period of forty (40) years commencing with the year in which the initial delivery date occurs.

PURCHASE CONTRACT OF MAY 24, 1939

4. The executory portions of the 1939 contract, as modified by the assignment of August 24, 1949, from the District to the Chowchilla Water District, and as amended by article 2 of this contract remain and shall remain in full force and effect, and the parties, upon the expiration of the term of Part A hereof, shall be entitled to all of the rights conferred upon them by article 14 of the 1939 contract and shall be subject to all of the terms and conditions of said article except as the aforesaid 1939 contract may be abrogated or amended by specific reference thereto and mutual agreement of the parties: *Provided*, That this contract, during the term of Part A hereof, shall constitute full satisfac-

tion of all of the District's rights under article 14 of the [fol. 17] aforesaid 1939 contract: *Provided, further,* That in lieu of the condition contained in the second sentence of article 14 (e) of the 1939 contract with respect to the time within which the District must exercise the option conferred by article 14 of the 1939 contract, the District shall have the right to exercise said option within six (6) months after the termination of Part A hereof and within six (6) months after the termination of each term provided for in succeeding contracts, and the said condition contained in the second sentence of article 14 (e) of the 1939 contract is hereby amended accordingly, and as amended is incorporated and made a part of this contract. Under this Part A and under succeeding contracts the rates to be charged the District for water service shall not exceed charges made to others than the District for the same class of water and service from Friant Dam and Reservoir.

WATER TO BE FURNISHED TO DISTRICT

5. (a) After the initial delivery date and until March 1 of the year following the completion of the distribution system, as announced by the contracting officer as prescribed in article 12 (b), or for a period of five (5) years after March 1 of the year following that in which the initial delivery date occurs, whichever is the longer period, the United States will furnish to the District and the District each year will accept and pay, as provided in article 7 hereof, for Class 1 and Class 2 water from the Madera Canal in the quantities specified in a schedule submitted [fol. 18] by the District in accordance with article 6 (b) hereof for such year: *Provided,* That no Class 1 water shall be furnished to the District and the District shall not be obligated to accept and pay for Class 1 water until the date, announced by the contracting officer, that the facilities necessary for furnishing said Class 1 water have been completed and after said date no more than sixty-nine percent (69%) of the total quantity of water called for by the District during any such year in the aforesaid schedule shall be Class 2 water, nor shall the United States be obligated to furnish more than eighty-five thousand (85,000) acre-feet of Class 1 water during any such year.

(b) In the year commencing on March 1 following the completion of the distribution system, as announced by the contracting officer as provided in article 12 (b), or the sixth year from March 1 of the year in which the initial delivery date occurs, whichever is the later, and each year thereafter during the remainder of the term of Part A, the United States shall furnish to the District from the Madera Canal and the District shall accept and pay for:

(i) Eighty-five thousand (85,000) acre-feet of Class 1 water: *Provided*, That at any time the parties hereto by mutual agreement may increase or decrease the amount of Class 1 water required thereafter to be furnished each year to the District by the United States during the remainder of the term of this contract; and

(ii) One hundred and eighty-six thousand (186,000) [fol. 19] acre-feet of Class 2 water: *Provided*, That the District shall not be obligated to accept nor shall the United States be obligated to furnish more than forty thousand (40,000) acre-feet of Class 2 water during any period of thirty (30) consecutive calendar days, and: *Provided, further*, That at any time or times during the term of Part A the amount of Class 2 water required to be accepted and paid for by the District pursuant to this article each year during the remaining term of Part A may be increased or decreased if the District and the contracting officer concur in a finding that such increase or decrease is necessary or desirable.

(iii) The quantities of eighty-five thousand (85,000) acre-feet of Class 1 water and one hundred and eighty-six thousand (186,000) acre-feet of Class 2 water as referred to in (i) and (ii) above have been agreed upon as those which, upon the basis outlined, will most nearly approximate the furnishing of an average annual supply of one hundred and seventy-two thousand (172,000) acre-feet of water to the District if Friant Dam and Reservoir is operated as presently planned and anticipated. The United States at any time or times may amend or revise its plan of operation of Friant Dam and Reservoir but if said revision or

amendment of the plan of operation substantially impairs or prejudices the possibility of the District obtaining an average annual supply of one hundred and seventy-two thousand (172,000) acre-feet of water pursuant to this contract, the quantities set forth in sub- [fol. 20] divisions (i) and (ii) shall be adjusted so that the possibility of the District obtaining an average annual supply of one hundred and seventy-two thousand (172,000) acre-feet of water pursuant to this contract will be restored and maintained unimpaired.

TIME FOR DELIVERY OF WATER

6. (a) On or before February 15, of each calendar year, beginning after the initial delivery date, the contracting officer shall, by a written notice to the District, announce the quantity of Class 2 water estimated to be available for delivery to the District during the year immediately to follow. The contracting officer may revise the aforesaid estimate but, upon doing so, he shall so notify the District in writing and the District shall be obligated to accept and pay for the addjtional quantities so announced by the contracting officer to be available for the District.

(b) The District shall submit in writing to the contracting officer, on or before March 1 of each year, a schedule subject to the provisions hereof, indicating the desired times and quantities for the delivery of all Class 1 and Class 2 water during such year. The United States shall, within the provisions hereof, as conclusively determined by the contracting officer, make all reasonable effort to deliver said water in accordance with said schedule, or any revision thereof submitted by the District within a reasonable time before the desired change, if any, of time for delivery.

[fol. 21] (c) The District may, with the written consent of the contracting officer, in any year exchange water with any other District which has contracted with the United States for water from the Project. No sale or other disposal by the District for use outside the District of any water, or the right to the use thereof, furnished to the District pursuant to this contract shall be valid without the contracting officer's written consent thereto.

RATE AND METHOD OF PAYMENT FOR WATER

7. (a) The contracting officer will, on or before February 15 of each calendar year, by a written notice, announce to the District the rates of payment to be made by the District for all water to be delivered to it pursuant to this contract during the ensuing year; but in no event shall the rates so announced be in excess of three dollars and fifty cents ($3.50) per acre-foot for Class 1 water and one dollar and fifty cents ($1.50) per acre-foot for Class 2 water.

(b) The District shall, each year during the period described in article 5 (a), in advance of the delivery of any water for such year, make payments for all Class 1 and Class 2 water requested by the District in the schedule submitted as aforesaid at the rates fixed and in the manner provided in (a) of this article.

(c) During the period described in article 5 (b), the District shall, each year in advance of the delivery of water for said year, make payment to the United States [fol. 22] for all water to be furnished to the District pursuant to article 5 (b), at rates fixed as provided in (a) of this article, at the times and in the manner as follows:

(i) For all Class 1 water which the District is required to receive pusuant to the provisions of article 5 (b) (i) and for all Class 2 water which the contracting officer theretofore has announced will be available to the District and which the District is required to receive and pay for pursuant to article 5 (b) (ii). Such payment shall be made by the District on or before March 1 or such other date, prior to the time for the commencement of delivery of such water in the particular year, as may be specified by the contracting officer by a written notice to the District; and

(ii) For all Class 2 water actually available in excess of that originally announced by the contracting officer and which the District is required to receive pursuant to the second sentence of article 6 (a). Such payment by the District shall be made on or before

the date, as announced by the contracting officer, that delivery of such Class 2 water will be commenced.

(d) In the event that the District fails or refuses to accept delivery of the quantities of water available for delivery to and required to be accepted by it pursuant to this contract, or in the event that the District in any year, commencing with the year in which the distribution system [fol. 23] has been completed as announced by the United States as provided in article 12 (b) hereof or the sixth year after the initial delivery date, whichever is the later, fails to submit a schedule for delivery as provided in article 6 (b), said failure or refusal shall not relieve the District of its obligation to pay for said water and the District agrees to make payment therefor in the same manner as if said water had been delivered to and accepted by it in accordance with this contract.

(e) Water furnished to the District during any month designated in the schedule submitted by it pursuant to article 6 (b), for the furnishing of water to the District, shall be deemed to have been accepted as Class 1 water to the extent that Class 1 water is called for in said schedule for said month, and all water furnished to the District in excess of the amount of Class 1 water called for in said schedule for said month shall be deemed to have been accepted as Class 2 water. Water available for furnishing to the District in accordance with the approved schedule and not accepted by the District shall be deemed to have been accepted by the District in accordance with the aforesaid schedule.

ADJUSTMENTS FOR CLASS 2 WATER

8. The amount of any overpayment by the District by reason of the quantity of Class 2 water actually available for the District during any year, as conclusively determined by the contracting officer, having been less than the quantity of such water which the District otherwise under [fol. 24] the provisions of this contract would have been required to receive and pay for, shall be applied first to any accrued indebtedness arising out of Part A and then due and owing to the United States by the District, and any

amount of such overpayment then remaining shall, at the option of the District, be refunded to the District or credited upon amounts to become due to the United States from the District under the provisions of Part A in the ensuing year.

POINT OF DELIVERY, MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

9. (a) The water to be furnished to the District pursuant to this contract will be delivered from the Madera Canal at such points as may be agreed upon in writing by the contracting officer and the District.

(b) All water delivered pursuant to this contract shall be measured by the United States at each point of delivery established pursuant to (a) of this article, and with equipment installed, operated, and maintained by the United States. Upon the request of the District, the accuracy of such measurements will be investigated by the contracting officer and any errors appearing therein adjusted.

(c) The United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water which has been delivered to the District hereunder or which is in or escapes from facilities not being operated and maintained by the United States, nor for claim of dam-[fol. 25] age of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with such control, carriage, handling, use, disposal, or distribution of such water: *Provided*, That the United States reserves the right to all waste, seepage, and return flow water derived from water furnished to the District hereunder and which escapes or is discharged beyond the District's boundaries.

(d) Notwithstanding any provision of this contract to the contrary, the United States shall not be obligated to furnish either Class 1 or Class 2 water to the District pursuant to Part A unless and until the construction by the United States of the facilities required for the furnishing of the respective class of water to the District has been completed, as conclusively determined by the contracting officer.

(e) The United States may temporarily discontinue or reduce the amount of water to be furnished to the District as herein provided for purposes of necessary investigation, inspection, maintenance, repair, or replacement of any of the Project facilities necessary for the furnishing of water to the District or any part thereof but so far as feasible the United States will give the District due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. In the event of any such discontinuance or reduction, the United States will, upon the resumption of service, approximate, to the extent that it is feasible to do so, the [fol. 26] quantity of water which would have been furnished to the District in the absence of such contingency.

UNITED STATES NOT LIABLE FOR WATER SHORTAGE

10. (a) There may occur at times a shortage during any year in the quantity of water available for furnishing to the District by the United States pursuant to this contract through and by means of the Project and in no event shall any liability accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising from a shortage on account of errors in operation, drouth, or unavaidable causes. In no event shall the United States either (i) deliver from Friant Reservoir in any year any Class 2 water pursuant to this or any other contract heretofore or hereafter entered into involving the same Project water supply until the contracting officer shall have determined that the quantity of Class 1 water required to be delivered to the District from Friant Reservoir hereunder and to others under any such other contract will be available for delivery in said year in conformance with the schedule submitted by the District pursuant to article 6 (b) hereof, nor (ii) execute contracts which, together with this contract, shall in the aggregate provide for furnishing during the life of this contract Class 1 water from Friant Reservoir in excess of eight hundred thousand (800,000) acre-feet per year. In any year in which there may occur a shortage from any cause, the United States reserves the [fol. 27] right to apportion the available water supply among the District and others entitled, under existing and

future contracts, to receive Class 1 water from Friant Reservoir in accordance with the conclusive determination of the contracting officers as follows:

(i) A determination shall be made of the total quantity of Class 1 water agreed to be accepted during the respective year under all contracts then in force for the delivery of Class 1 water through the Friant-Kern and Madera Canals and the San Joaquin River from Friant Reservoir, the amount so determined being herein referred to as the "Class 1 contractual commitments";

(ii) A determination shall be made of the total quantity of Class 1 water which is available for meeting Class 1 contractual commitments, the amount so determined being herein referred to as the "available supply";

(iii) The total quantity of Class 1 water agreed to be accepted by the District during the respective year, under article 5 hereof, shall be divided by the Class 1 contractual commitments, the quotient thus obtained being herein referred to as the District's "contractual entitlement";

(iv) The available supply shall be multiplied by the District's contractual entitlement and the result shall be the quantity of water required to be delivered by the United States to the District for the respective year, but in no event shall such amount exceed the [fol. 28] total quantity of Class 1 water agreed to be accepted by the District pursuant to article 5 hereof.

In so far as determined by the contracting officer to be practicable, the United States will, in the event a shortage appears probable, notify the District of such determination in advance of the irrigation season.

(b) If there only is available in any year, as determined by the contracting officer, for furnishing to the District pursuant to this contract less than the quantity of Class 2 water which the District otherwise would be entitled to receive pursuant to article 5 hereof, the quantity of Class 2

water which shall be furnished to the District by the United States will be determined in the manner set forth in paragraphs (i), (ii), (iii), and (iv) of subdivision (a) of this article for apportioning Class 1 water in the event of a shortage: *Provided*, That if the total quantity of Class 2 water agreed to be accepted during such year under this and all other contracts for Class 2 water shall be in excess of one million four hundred thousand ($1,400,000) acre-feet, the District shall be entitled to receive and obligated to accept and pay for thirteen and three tenths percent (13.3%) of the available supply of Class 2 water, but in no event shall the total amount of Class 2 water required to be furnished by the United States and accepted and paid for by the District in any year be in excess of one hundred and eighty-six thousand (186,000) acre-feet.

[fol. 29] (c) In the event that in any year there is delivered to the District, by reason of any such shortage or apportionment, or any discontinuance or reduction of service as set forth in article 9 (e) hereof, less than the quantity of water which the District otherwise would be entitled to receive hereunder, there shall be made an adjustment on account of the amounts paid to the United States by the District for Class 1 water for said year, in a manner similar to that provided for in article 8 hereof. To the extent of such deficiency, such adjustment shall constitute the sole remedy of the District or anyone having or claiming to have by, through, or under the District, the right to the use of any of the water supply provided for herein. The United States does not guarantee the furnishing and delivery of any Class 2 water: *Provided*, however, That if, as, and when said water is available for delivery, as determined by the United States, said Class 2 water will be furnished and delivered to the District as provided in article 5 hereof as modified by subdivision (b) of article 10.

(d) The rights of the District under Part A of this contract are subject to the terms of the "Contract for Exchange of Waters," dated July 27, 1939, between the United States and the San Joaquin and Kings River Canal and

Irrigation Company, Incorporated, and others, recorded September 18, 1939, in the office of the County Recorder of

(i) Fresno County in Book 1810 of Official Records at page 50;

[fol. 30] (ii) Stanislaus County in Book 704 of Official Records at page 1;

(iii) Merced County in Book 623 of Official Records at page 417;

(iv) Madera County in Book 247 of Official Records at page 113.

USE OF WATER FURNISHED TO DISTRICT

11. Water furnished to the District by the United States pursuant to Part A shall not be delivered or furnished by the District for any purposes other than agricultural purposes, including, but not restricted to, the watering of livestock, or underground water replenishment, without the written consent of the contracting officer.

PART B

CONSTRUCTION OF WORKS AND LIMIT OF EXPENDITURES THEREFOR

12. (a) To the extent that funds may now or hereafter be available by appropriation the United States will expend toward construction of a general distribution and lateral system, surface drainage works, and other related distribution and surface drainage works, all collectively comprising and herein styled the "distribution system," a sum not in excess of eight million three hundred and twenty thousand dollars ($8,320,000), or so much thereof as the contracting officer deems expedient or necessary for the completion of the distribution system. Said distribution system will not include the Madera Canal, the Madera Canal right-of-way nor any facilities or structures located [fol. 31] thereon. The distribution system will be constructed so as to provide facilities for the delivery of water from the Madera Canal to each unit of a total of approximately one hundred and thirteen thousand

(113,000) acres of irrigable land, each unit to be as mutually agreed upon by the District and the contracting officer, but in no event to comprise more than one hundred and sixty (160) acres of such land. The general type and layout of the distribution system shall be subject to the review and approval of the District, evidenced by a resolution of the District Board of Directors, prior to the commencement of construction of the distribution system.

(b) The contracting officer shall notify the District, in writing, when total expenditures have been made to the limit determined as provided in (a) of this article or so much thereof as the contracting officer considers necessary and useful for the construction of the distribution system as described in (a) of this article. Upon the furnishing of such notice the distribution system shall be deemed to have been completed within the meaning of this contract.

PAYMENT BY DISTRICT

13. (a) The District will repay to the United States the actual cost, but in no event in excess of eight million three hundred and twenty thousand dollars ($8,320,000), incurred by the United States in providing the distribution system. The obligation defined in this subarticle shall [fol. 32] be referred to hereinafter as the "construction obligation."

(b) The United States will invoke all legal and valid reservations of rights-of-way under acts of Congress, or otherwise reserved or held by it, without cost to the District, except that the United States reserves the right where rights-of-way are thus acquired to reimburse the owner of the servient lands for the value of improvements which may be destroyed and the District agrees that the United States may include such disbursements in the cost of the distribution system to be repaid by the District. The District agrees to convey to the United States, without cost, on the request of the contracting officer, the unencumbered fee simple title to any and all lands owned by it, or perpetual easements therein, required for right-of-way purposes for the distribution system. Where rights-of-way are required for works herein agreed to be constructed by

the United States, and such rights-of-way are not reserved to the United States under acts of Congress or otherwise, and the lands over which such rights-of-way are required are not then owned by the District, then the District agrees that it will, upon request of the United States, acquire such lands, or perpetual easements therein, using in connection therewith such forms of contracts, deeds, and other necessary papers as may be required by the United States, and purchases shall be only at prices that are satisfactory to the Secretary. Title shall be taken in the name of the United States, and on procuring execution of the necessary contracts, deeds, and other papers they shall be trans-
[fol. 33] mitted by the District to the United States, by whom payment will be made after title has been found satisfactory to the United States. Expenses incurred by the District in connection with acquisition above provided for shall, to the extent approved by the contracting officer, be paid to the District on the basis of annual statements submitted at the close of each calendar year, and shall be chargeable as part of the construction costs.

(c) The construction obligation shall be paid by the District in forty (40) successive, equal, annual installments, the first of which shall become due in the year following the last year of the development period described in article 14 hereof. Such installments shall be payable one-half (½) thereof on February 1 and one-half (½) thereof on July 1, of each calendar year. If the actual construction cost shall not have been determined by the Secretary when the first construction obligation shall have become due thereunder, he shall announce the estimated construction cost. Such estimated construction cost shall govern the construction obligation installments herein referred to until such time as the actual construction obligation can be determined and a statement thereof furnished to the District. When notice of the actual construction obligation has been given to the District, the installments coming due thereafter from the District shall be adjusted to reflect any difference between the estimated construction cost and the acutal construction cost of the distribution system.

[fol. 34] (d) At any time the contracting officer may, in his discretion, upon request of the District, evidenced by a certified copy of a resolution of its Board of Directors, provide for dates upon which annual payments of the District's construction obligation shall become due and payable other than and in lieu of the dates fixed for the payment of such annual installments as provided in (c) of this article.

DEVELOPMENT PERIOD

14. A development period for the lands in the District is hereby fixed at two (2) years from and including the first year in which the distribution system is so far completed as to be available for use, and water is available for furnishing to the District pursuant to Part A of this contract for substantially all of the irrigable lands in the District as announced by the Secretary in a written notice to the District setting forth the date of such availability. Such notice shall be furnished to the District at least six (6) months prior to the date of the commencement of the development period.

ESTIMATED COST OF OPERATION AND MAINTENANCE TO BE PAID IN ADVANCE

15. (a) During the time that the distribution system or any part thereof is being operated by the United States, as provided in article 16, commencing with the first year of the development period, and each calendar year thereafter, the District will pay in advance to the United States not [fol. 35] later than January 1, upon estimates therefor to be furnished by the United States on or before September 1 next preceding, the estimated cost of operation and maintenance for such calendar year. The surplus of any amount so advanced by the District for operation and maintenance by the United States during any calendar year shall be credited on future estimated cost of operation and maintenance by the United States: *Provided*, That any such operation and maintenance charges paid to the United States by the District during the development period which are in excess of the actual cost of the operation and maintenance of the distribution system by the United States

for such development period shall be credited to the construction obligation of the District.

(b) Whenever in the opinion of the contracting officer the amounts available from payments made by the District of the estimated annual operation and maintenance charges will be inadequate properly to operate and maintain the distribution system to the end of any calendar year, he may give written notice to the District, herein styled supplemental operation and maintenance charge notice, stating therein the amount of additional advance payments of funds required for such operation and maintenance, and the District shall pay the amount thereof on or before the dates specified in such supplemental operation and maintenance charge notice.

(c) Any amount of said operation and maintenance payments by the District, for any year subsequent to the de- [fol. 36] velopment period, remaining unexpended and unobligated in the possession of the United States on the effective date of a transfer in whole or in part of the distribution system to the District for operation and maintenance, in accordance with article 16 hereof, shall be refunded to the District.

(d) To the extent that the distribution system is operated and maintained by the United States, there shall be included as a part of the operation and maintenance costs, as covered by the provisions of this article, such items for administration, supervision, inspection, replacement, and general expenses as properly are chargeable to such work in the opinion of the contracting officer.

TRANSFER OF OPERATION AND MAINTENANCE TO DISTRICT— UNITED STATES TO BE HELD HARMLESS

16. (a) On the date of the commencement of the development period, the District shall take over and at its own expense operate and maintain the distribution system or any part thereof described in a transfer notice to be furnished to the District by the Secretary. The District agrees to accept, upon the effective date of the transfer notice, the care, operation, and maintenance of the transferred

works and thereafter, without expense to the United States, to care for, operate and maintain the transferred works and deliver water therefrom in full compliance with the Federal reclamation laws and the terms of this contract and in such manner that said work shall remain in as good and efficient condition for the development, diversion, and [fol. 37] distribution of the aforesaid water supply as on the effective date of such transfer to the District. The District will use all proper methods to secure the economical and beneficial use of the water delivered by means of the distribution system.

(b) At any time prior to full payment of the construction obligation that the contracting officer determines that the District has not cared for, operated, maintained, or delivered water from the transferred works in the manner as aforesaid, the United States may take back and operate and maintain such works, and the District hereby agrees to surrender possession of said works. The works so taken back for operation and maintenance by the United States may similarly be retransferred to the District, upon furnishing the District ninety (90) days' written notice of intention to retransfer. If any works are taken back by the United States at such time that funds for the operation and maintenance cannot be advanced in accordance with the procedure set forth in article 15 hereof, the District hereby agrees, on the basis of statements of estimates to be submitted by the contracting officer, to advance sufficient funds to provide for the operation and maintenance of such works until such funds can be provided under the procedure set forth as aforesaid in article 15 hereof.

(c) No substantial change in any of the transferred works shall be made by the District without first obtaining the written consent of the contracting officer. The District [fol. 38] shall make promptly any and all repairs to the transferred works which, in the opinion of the contracting officer, are deemed necessary for the proper care, operation, and maintenance of the same. If at any time in the opinion of the contracting officer any part of the transferred works shall from any cause be in a condition unfit for service, he may order that the water be turned out and shut off from

that part of the distribution system until in his opinion, such property is put in proper condition for service. In the event the District neglects or fails to make such repairs, the United States may cause the repairs to be made and may charge the cost therefor to the District, which charge the District shall pay in the manner provided in article 17 hereof. The District shall provide for the collection of sufficient operation and maintenance or toll charges to pay all such bills to the United States within the time stated herein in addition to providing the necessary funds to meet the other obligations of the District.

(d) The United States may cause to be made from time to time, but in any event no more than three times per year, a reasonable inspection of the transferred works to ascertain whether the terms of this contract are being executed by the District. Such inspection shall include examination of the transferred property and of the books, records, and papers of the District together with examinations in the office of the Bureau of Reclamation of all contracts, papers, plans, records, and programs connected with said property. [fol. 39] The actual expenses of such inspections and examinations shall be paid by the District to the United States in the manner provided in article 17 hereof.

(e) No liability shall accrue against the United States, its officers and employees because of damages caused by the operation of the distribution system by the District.

DISTRICT TO PAY CERTAIN MISCELLANEOUS COSTS RELATING TO TRANSFERRED WORKS

17. In addition to the other payments to be made by the District as provided by this contract, the District shall pay to the United States, on or before April 1 of the calendar year following that in which the same shall have been incurred and a statement thereof furnished by the United States, the following costs:

(a) Such items of cost incurred by the United States in connection with the distribution system for administration, supervision, and inspection during the time the distribution system is operated and maintained by the District and for the period covered by the statement;

(b) The cost of repairs to transferred works made by the United States as provided in article 16 hereof.

COMPUTATION OF COSTS

18. The actual cost of the distribution system, which will constitute the District's construction obligation, shall embrace all expenditures of whatsoever kind in connection with, growing out of, or resulting from work performed in [fol. 40] connection with the distribution system, including but not limited to the cost of labor, material, equipment, engineering, and legal work, superintendence, administration and overhead, rights-of-way, property and damage of all kinds, and shall include all sums expended by the Bureau of Reclamation in surveys and investigations in connection with the irrigation of District lands, both prior to and after the execution of this contract, and the expense of all soil investigations and other preliminary work. The determination of what costs are properly chargeable hereunder, and the amount thereof, shall conclusively be made by the contracting officer.

END OF PART B

AGREED CHARGES A GENERAL OBLIGATION OF THE DISTRICT

19. The District as a whole is obligated to pay to the United States the charges becoming due as provided in this contract notwithstanding the individual default in the payment to the District by individual water users of assessments, tolls or other charges levied by the District.

ALL BENEFITS CONDITIONED UPON PAYMENT

20. Should any assessment or assessments levied by the District against any tract of land or water user in the District and necessary to meet the obligations of the District under this contract be judicially determined to be irregular or void or should the District or its officers be enjoined or restrained from making or collecting any assess- [fol. 41] ments upon such land or from such water user as provided for herein, then such tract shall have no right to

any of the benefits of this contract, and no use shall be made of the distribution system nor any water made available by the United States pursuant hereto be furnished for the benefit of any such lands or water users, except upon the payment by the landowner of his assessment or a toll charge for the use of the distribution sysyem or such water, notwithstanding the existence of any contract between the District and the owner or owners of such tract. Contracts, if any, between the District and the water users involving service from the distribution system or water furnished pursuant to this contract shall provide that such use shall be subject to the terms of this contract. It is further agreed that the payment of charges at the rates and upon the terms and conditions provided for herein is a prerequisite to the right to service from the distribution system or water furnished to the District pursuant to this contract; and no irregularity in levying taxes or assessment by the District, nor lack of authority in the District, whether affecting the validity of District taxes or assessments or not, shall be held to authorize or permit any water user of the District to demand or receive service or water made available pursuant to this contract, unless charges at the rates and upon the terms and conditions provided for herein have been paid by such water user.

LEVY OF TAXES AND ASSESSMENTS
FIXING OF RATES AND TOLLS

[fol. 42] 21. The District will cause to be levied and collected all necessary taxes and assessments and will use all of the authority and resources of the District to meet its obligations hereunder, to make in full all payments to be made pursuant to this contract on or before the date such payments become due and to meet its other obligations under this contract. The District may, either or both, require the payment of toll charges or levy assessments for such water or service. All assessments levied by the District to meet the obligations accruing under this contract shall, unless otherwise determined by the Board of Directors of the District, be upon an *ad valorem* basis.

REFUSAL OF WATER IN CASE OF DEFAULT

22. No water or service shall be furnished to the District or by the District to or for the use of any lands or parties therein during any period in which the District may be in arrears in the advance payment of operation and maintenance or toll or rental charges or for more than twelve (12) months in the payment of construction charges accruing under this contract. No water or service shall be furnished to or by the district pursuant to this contract for lands or parties which are in arrears in the payment to the District of any assessments, rates, tolls, or rental charges of the District levied or established by the District and necessary for the purpose of raising revenues to meet the payment by the District to the United States of the [fol. 43] District's obligation under this contract. The provisions of this article are not exclusive and action taken pursuant hereto shall not prejudice or preclude the United States from exercising any other remedy to enforce collection of any amounts due hereunder.

PENALTY UPON DELINQUENCY IN PAYMENT

23. Upon every installment of money required to be paid by the District to the United States pursuant to this contract which shall remain unpaid after the same shall have become due and payable, there shall be imposed a penalty of one-half (½) of one (1) percent per month of the amount of such delinquent installment from and after the date when the same becomes due until paid, and the District hereby agrees to pay said penalty: *Provided*, That no penalty shall be chargeable against the net amount of any adjustment made pursuant to article 8 hereof.

DISTRICT TO KEEP BOOKS AND RECORDS AND REPORT CROP AND OTHER DATA

24. The District shall establish and maintain account and other books and records sufficient to enable it to furnish, in so far as the District is permitted to do so by the laws of the State of California, to the Bureau of Reclamation reports and statements to such extent and in such manner and form as may be prescribed by the United

States as to information pertaining to (a) accounts and financial transactions of the District, in so far as such information pertains to this contract and operations thereunder, (b) crops raised and agricultural and livestock prod-
[fol. 44] ucts produced on the lands within the District, a report thereon to be furnished to the contracting officer annually on or before December 31.

Inspection of Books and Records

25. Subject to applicable Federal laws and regulations, the proper officers or agents of the District shall have full and free access at all reasonable times to the Project account books and official records of the Bureau of Reclamation, in so far as the same pertain to the matters and things provided for in this contract, relating to the construction, acquisition, care, operation and maintenance of the distribution system, with the right at any time during office hours to make copies thereof, and the proper representatives of the United States shall have similar rights in respect to the account books and records of the District.

Changes in Organization of District

26. While this contract is in effect no change will be made in the District either by inclusion or exclusion of lands, by partial or total consolidation or merger with another district, by proceedings to dissolve, or otherwise, except upon the contracting officer's written assent thereto.

Title to Remain in the United States

27. Title to all of the Project works, including the distribution system constructed by the United States pursuant to this contract, shall be and remain in the name of the United States until otherwise provided for by the Congress, notwithstanding the transfer hereafter of any of such
[fol. 45] works to the District for operation and maintenance.

LAND NOT TO RECEIVE SERVICE FROM DISTRIBUTION SYSTEM OR WATER FURNISHED TO DISTRICT BY UNITED STATES UNTIL OWNERS THEREOF EXECUTE CERTAIN CONTRACTS

28. (a) No water or service made available pursuant to this contract shall be furnished to any excess lands as defined in article 30 hereof unless the owners thereof shall have executed valid recordable contracts in form prescribed by the United States, agreeing to the provisions of articles 28, 29, and 30 of this contract; agreeing to the appraisal provided for in article 29 hereof and that such appraisal shall be made on the basis of the actual bona fide value of such lands at the date of the appraisal without reference to the construction of the Project, all as hereinafter provided; and agreeing to the sale of his excess lands under terms and conditions satisfactory to the Secretary and at prices not to exceed those fixed as hereinafter provided. No sale of any excess lands shall carry the right to receive water or service made available pursuant to this contract unless and until the purchase price involved in such sale is approved by the contracting officer, and upon proof of fraudulent representation as to the true consideration involved in such sale the United States may instruct the District by written notice to refuse to furnish any water or service subject to this contract to the land involved in such fraudulent sales and the District thereafter shall not furnish said water or service to such lands.

[fol. 46] (b) If Project water furnished to the District pursuant to this contract reaches the underground strata of excess land owned by a large land owner who has not executed a recordable contract and the large land owner pumps such Project water from the underground, the District will not be deemed to have furnished such water to said lands within the meaning of this contract if such water reached the underground strata of the aforesaid excess land as an unavoidable result of the furnishing of Project water by the District to nonexcess lands or to excess lands with respect to which a recordable contract has been executed.

VALUATION AND SALE OF EXCESS LANDS

29. (a) The value of the excess irrigable lands within the District, held in private ownership of large land owners as defined in the next succeeding article hereof, for the purposes of this contract, shall be determined, subject to the approval thereof by the Secretary, by three appraisers. One of said appraisers shall be designated by the Secretary and one shall be designated by the District and the two appraisers so appointed shall name the third. If the appraisers so designated by the Secretary and the District are unable to agree upon the appointment of the third, the presiding justice of the Third District Court of Appeal of the State of California shall be requested to designate the third appraiser.

(b) The following principles shall govern the appraisal;

(i) No value shall be given such lands on account of [fol. 47] the existing or prospective possibility of securing water or service from the distribution system;

(ii) The value of improvements on the land at the time of said appraisal shall be included therein, but shall also be set forth separately in such appraisal.

(c) The cost of the first two appraisals and each subsequent appraisal requested by the United States shall be paid by the United States:

(d) Any improvements made or placed on the appraised land after the appraisal hereinabove provided for prior to sale of the land by a large land owner may be appraised in like manner.

(e) Excess irrigable lands sold by large land owners within the District shall not carry the right to receive water or service made available pursuant to this contract for such land and the District agrees to refuse to furnish such water or service to land so sold until, in addition to compliance with the other provisions hereof, a verified statement showing the sale price upon any such sale shall have been filed with the District.

(f) The District agrees to take all reasonable steps requested by the contracting officer to ascertain the occurrence and conditions of all sales of irrigable land of large land owners in the District and to inform the United States concerning the same.

(g) A true copy of this contract and of each appraisal made pursuant thereto shall be maintained on file in the [fol. 48] office of the District and like copies in such principal office of the Bureau of Reclamation as may be established hereafter in connection with the distribution system and shall be made available for examination during the usual office hours by all persons who may be interested therein.

EXCESS LANDS

30. (a) As used herein the term "excess land" means that part of the irrigable land within the District in excess of one hundred and sixty (160) acres held in the beneficial ownership of any single person, or in excess of three hundred and twenty (320) acres held in the beneficial ownership of husband and wife jointly, as tenants in common or by the entirety, or as community property; the term "large land owner" means an owner of excess lands and the term "nonexcess land" means all irrigable land within the District which is not excess land as defined herein.

(b) Each large land owner as a further condition precedent to the right to receive water or service made available pursuant to this contract for any of his excess land shall:

(i) Before any water is furnished by the District to his excess land, execute a valid recordable contract in form prescribed by the United States, agreeing to the provisions herein contained in articles 28, 29, and 30 and agreeing to dispose of his excess land in accordance therewith to persons who can take title thereto as nonexcess land as herein provided and at a price not to [fol. 49] exceed the approved, appraised value of such excess land and within a period of ten (10) years after the date of the execution of said recordable contract and agreeing further that if said land is not so disposed of within said period of ten (10) years the Secre-

tary shall have the power to dispose of said land subject to the same conditions on behalf of such large land owners; and the District agrees that it will refuse to furnish said water or service to any large land owner other than for his nonexcess land until such owner meets the conditions precedent herein stated;

(ii) Within thirty (30) days after the date of notice from the United States requesting such large land owner to designate his irrigable lands under the Project which he desires to designate as nonexcess land, file in the office of the District, in duplicate, one copy thereof to be furnished by the District to the Bureau of Reclamation, his written designation and description of lands so selected to be nonexcess land and upon failure to do so the District shall make such designation and mail a notice thereof to such large land owner, and in the event the District fails to act within such period of time as the contracting officer considers reasonable, such designation will be made by the contracting officer, who will mail a notice thereof to the District and the large land owner. The large land owner shall become bound by any such action on the part of [fol. 50] the District or the contracting officer and the District will furnish said water and service only to the land so designated to be nonexcess land. A large land owner may, with the consent of the contracting officer, designate land other than that previously designated as nonexcess land: *Provided*, That an equal acreage of the land previously designated as nonexcess shall, upon such new designation, become excess land thereafter subject to the provisions of articles 28, 29, and 30 of this contract and shall be described in an amendment of such recordable contract as may have been executed by the large land owner in the same manner as if such land has been excess land at the time of the original designation.

AMENDMENT OF FEDERAL RECLAMATION LAWS

31: In the event that the Congress of the United States repeals the so-called excess-land provisions of the Federal

reclamation laws, articles 28, 29 and 30 of this contract will no longer be of any force or effect, and, in the event that the Congress amends the excess-land provisions or other provisions of the Federal reclamation laws the United States agrees, at the option of the District, to negotiate amendments of appropriate articles of this contract, all consistently with the provisions of such repeal or amendment.

Contingent Upon Appropriations or Allotments of Funds

(32) The expenditure of any money or the performance of any work by the United States herein provided for which [fol. 51] may require appropriations of money by the Congress or the allotment of funds, shall be contingent upon such appropriations or allotments being made. The failure of the Congress so to appropriate funds or the failure of an allotment of funds shall not relieve the District from any obligations then accrued under this contract and no liability shall accrue to the United States in case such funds are not appropriated or allotted.

Officials Not to Benefit

33. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

Notices

34. Any notice or announcement which the provisions hereof contemplate shall be given to one of the parties hereto by the other shall be deemed to have been given if deposited in the United States Post Office, on the part of the United States in a franked envelope addressed to the District at its office and on the part of the District in a postage prepaid envelope addressed to the Bureau of Reclamation, Department of the Interior, Sacramento, California, or such other address as from time to time may

be designated by the contracting officer in a written notice to the District: *Provided*, however, That this article shall not preclude the effective service of any such notice or [fol. 52], announcement by other means.

ASSIGNMENT PROHIBITED: SUCCESSORS AND ASSIGNS OBLIGATED: DEFAULT

35. The provisions of this agreement shall apply to and bind the successors and assigns of the respective parties, but no assignment or transfer of this contract or any part thereof or interest therein shall be valid until and unless approved by the United States. Any waiver at any time by either party to this contract of its rights with respect to a default, or any other matter arising in connection with this contract, shall not be deemed to be a waiver with respect to any subsequent default or matter. All rights of action for breach of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States as amended (41 U.S.C. 15).

ASSURANCE RELATING TO VALIDITY OF CONTRACT

36. Promptly after the execution and delivery of this contract the District shall file and prosecute, to a final decree, including any appeal therefrom to the highest court of the State of California, in a court of competent jurisdiction a special proceeding for the judicial examination, approval, and confirmation of the proceedings had for the organization of the District and the proceedings of the District Board of Directors and of the District leading up to and including the making of this contract and the validity of the provisions thereof, as provided for by Section 23225 [fol. 53] of the Water Code of California (St. 1943, Ch. 368, Div. 11, Part 6, Chap. 2, Art. 3, Sec. 23225, approved May 13, 1943).

PERFORMANCE OF WORK WITH CONTRIBUTED FUNDS

37. (a) Pursuant to the Act of Congress of March 4, 1921 (41 Stat. 1367, 1404), the United States will perform with funds contributed by the District any construction or maintenance work on the distribution system not otherwise

provided for by this contract, or any construction work covered by this contract but for which funds may not be available; *Provided,* That the undertaking of any such work and the plans therefor must be approved, funds therefor shall be advanced by the District as may be directed by the contracting officer and there shall be submitted to the United States a certified copy of the resolution of the Board of Directors of the District describing the work to be done and authorizing its performance with contributed funds.

(b) After completion of any work so undertaken the District will be furnished with a statement of the cost thereof, and any unexpended balance of the funds will be refunded to the District or applied as otherwise directed by the District, and the amount by which the cost of such work exceeds the amount of the funds advanced by the District therefor shall be paid by the District to the United States as the contracting officer may be direct.

NONDISCRIMINATION

38. The District shall not discriminate against any [fol. 54] employee or applicant for employment because of race, creed, color, or national origin, and shall require an identical provision to be included in contracts relating to the performance of this contract. This provision, however, does not refer to, extend to, or cover the activities of the District which are not related to or involved in the performance of this contract.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their names the day and year hereinabove written.

THE UNITED STATES OF AMERICA

May 14, 1951
1:35 P. M.

By (Sgd.) RICHARD L. BOKE
Regional Director, Region 2
Bureau of Reclamation
U. S. Department of the Interior

MADERA IRRIGATION DISTRICT

By (Sgd.) J. M. ALLEN
President of the Board
of Directors

(Sgd.) C. A. RIDGEWAY

(Sgd.) A. T. ROBERTS

(Sgd.) JOHN A. FRANCHI

(Sgd.) DEE V. ROMANS
Members of the Board
of Directors

(SEAL)

Attest:

(Sgd.) HUGH G. RODGERS
Secretary, Board of
Directors
Madera Irrigation District

[fol. 55] EXHIBIT "B" TO SECOND AMENDED COMPLAINT

1939 CONTRACT
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CENTRAL VALLEY PROJECT, CALIFORNIA

Contract for Purchases of Property and Water Rights

1. THIS CONTRACT, made this 24th day of May, nineteen hundred thirty-nine, pursuant to (a) Act of Congress approved June 17, 1902, (32 Stat. 388), and Acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Reclamation Law; (b) Act of Congress approved April 8, 1936 (49 Stat. 115), designated the Emergency Relief Appropriation Act of 1935; (c) Act of Congress approved June 22, 1936 (49 Stat.

1597), designated the First Deficiency Appropriation Act, fiscal year 1936; (d) Act of Congress approved August 9, 1938 (50 Stat. 564, 597), designated the Interior Department Appropriation Act, 1938; (e) Act of Congress approved August 26, 1937 (50 Stat. 844, 850), entitled "An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," and (f) Act of Congress approved May 9, 1938 (52 Stat. 291), between THE UNITED STATES OF AMERICA, hereinafter referred to as "United States", acting for this purpose by Harry Slattery, Under Secretary of the Interior, hereinafter referred to as the "Secretary", and MADERA IRRIGATION DISTRICT, an irrigation district organized and existing under and by virtue of the laws of the State of [fol. 56] California, pursuant to "the California Irrigation District Act" and acts amendatory thereof or supplementary thereto, with its principal place of business at Madera, California, hereinafter referred to as "District":

WITNESSETH:

2. WHEREAS, the United States contemplates the construction of the Central Valley Project, California, and as features thereof (a) the construction of a certain dam and appurtenant works for the storage and diversion of certain waters of the San Joaquin River, which dam and the reservoir created thereby will be respectively known as and designated "Friant Dam" and "Friant Reservoir", and (b) the construction of certain canals for the purpose of diverting and conveying water from the reservoir created by Friant Dam, which said canals are designated as "Madera Canal" and "Friant-Kern Canal"; and

3. WHEREAS, the arid or semi-arid lands within the District are in need of a supplemental water supply for use thereon; and

4. WHEREAS, the District has heretofore formulated and adopted a project with the object in view of making available to such lands a supplemental water supply, which project contemplates the construction by the District of a dam on the San Joaquin River located upon the same premises

upon which the United States now proposes and intends to construct said Friant Dam; and

[fol. 57] 5. WHEREAS, the District has condemned, purchased or contracted to purchase certain lands necessary for the construction of said dam by the District, which said lands are also necessary for the construction of said Friant Dam by the United States, and the District has further engaged in and conducted certain important litigation which has resulted in a definition of particular water rights on the San Joaquin River; and

6. WHEREAS, in connection with such project, the district has also made certain filings with the Division of Water Resources of the Department of Public Works of the State of California, pursuant to the Water Commission Act (Chapter 586, Statutes of 1913, as amended) to appropriate certain of the unappropriated waters of the San Joaquin River, which said filings have been continued in full force and effect by the District and are now in good standing before said Division of Water Resources; and

7. WHEREAS, the United States desires to acquire from the District such property and water rights hereinabove in paragraphs five (5) and six (6) mentioned; and

8. WHEREAS, the District is willing to sell and convey to the United States such property and rights as herein provided in the expectation that said Madera Canal to extend from the Friant Dam to a point on Ash Creek, a branch of the Chowchilla River, and of the capacity herein specified, will be constructed and completed for service substantially [fol. 58] concurrently with completion of construction of said Friant Dam and Reservoir, and that a supplemental water supply from said dam and reservoir through said canal will be made available to the District; and

9. WHEREAS, the United States recognizes that the District, in contracting to transfer and surrender to the United States its properties and rights hereinabove referred to, is relying upon the District being entitled to purchase a supplemental supply of water from Friant Dam and Reservoir (to be made available through Madera Canal), as hereinafter defined, and the United States desires to give to the

District assurance that, when the Central Valley Project is ready for operation and water is available from said Friant Dam and Reservoir, the District shall be given opportunity to purchase from said reservoir for delivery through said Madera Canal such a supplemental water supply for use upon lands within the District as now constituted and the District desires to have it understood that it contemplates contracting hereafter for such a water supply; and

10. WHEREAS, under the conditions aforesaid, the property herein agreed to be sold will no longer be necessary to be retained for the uses and purposes of the District, and therefore the District is authorized to dispose of same pursuant to the authority contained in Section 29 of "the California Irrigation District Act", as amended, and in Section 2 of the Act approved May 5, 1917, Statutes of [fol. 59] California, 1917, Chapter 160, as amended;

11. NOW, THEREFORE, it is agreed by and between the parties hereto as follows, to-wit:

Properties and Rights to be Conveyed to United States

12. The District hereby agrees to grant, bargain, sell, convey and confirm unto the United States, its successors and assigns forever, free of lien or encumbrance, all the following described property and rights:

Real Property:

(a) Lands comprising the Friant dam site, including the following parcels:

1. Lots 13, 17, 18 and 19 in Section 5 of Township 11 South, Range 21 East, M.D.B. & M., Fresno County, California.

2. Lots 2, 3, 9, 10, 11, 12 and 20 in Section 5, Township 11 South, Range 21 East, M.D.B. & M., Madera County, California, containing 174.93 acres, more or less, subject to a 100 foot right-of-way comprising 2.49 acres, more or less, in favor of Minarets and Western Railway Company across lots 11 and 20.

(b) Gravel bearing lands lying adjacent to the San Joaquin River in Fresno County, California, about a mile and a half below the Town of Friant and particularly described as follows:

1. In Section 18, Township 11 South, Range 21 East, M. D. B. & M.; Lot 2, excepting the south 332 [fol. 60] feet thereof; Lot 8, excepting the south 332 feet of the west 522.89 feet thereof.

2. In Section 13, Township 11 South, Range 20 East, M.D.B. & M.; Lot 10, excepting 1½ acres in the northeast corner thereof; ALL of Lot 9; ALL of Lot 6; that portion of Lot 8 described as follows: Beginning at a point on the north line of Lot 8, south 89° 12′ west, 114.1 feet from the east quarter corner of Section 12, Township 11 South, Range 20 East, M.D.B. & M.; thence south 55° 18′ west 1452.5 feet more or less to a point on the west line of Lot 8; thence northerly to the northwest corner of Lot 8; thence north 89° 12′ east along the north line of Lot 8 to the point of beginning.

3. In section 24, Township 11 South, Range 20 East, M.D.B. & M; Northwest Quarter of Northeast Quarter; All of Lot 11.

Containing 190.24 acres, more or less.

WATER RIGHTS:

(c) Except as hereinafter stated: All right, title and interest of the District in and to all water rights, and all of its rights to the use of water of whatsoever kind or nature, whether rights by appropriation, prescription or by virtue of said District's ownership of riparian lands in to and upon, and from the San Joaquin River, its tributaries, channels and sloughs, including the ordinary and extraordi- [fol. 61] nary flows thereof, together with the right as against said District, and as against said District only, its successors and assigns, to impound, store and divert all of said water for use within or without the watershed of said river. It is the intention of the District by this contract to agree to grant, bargain, sell, convey, and confirm unto the

United States all of the District's right, title and interest of every kind and character in and to any of the waters of, and its right to store, divert and use, and as against said District, and as against said District only, the right to store, divert and use within or without the watershed of said river, any of the waters of the San Joaquin River, including its tributaries, channels and sloughs, but excluding those tributaries which drain into said river below Mendota Dam, located in Section 19, Township 13 South, Range 15 East, M.D.B. & M.

Said rights agreed to be conveyed include but are not limited to the rights acquired by virtue of the following applications of the District to appropriate water from the San Joaquin River, on file with the Division of Water Resources of the State of California, pursuant to the provisions of the Water Commission Act, (Chap. 586, Statutes 1913, as amended);

Application Number	Date of Filing	Amount of Direct Flow Second Feet	Amount of Storage—Acre Feet
234	Jan. 19, 1916	3,000	500,000
1465	Sept. 26, 1919	3,000	500,000
2792	Mar. 13, 1922	9,000	600,000

[fol. 62] In connection with the conveyance and transfers of the above described property, the District hereby agrees, to the extent it owns or controls such data, to make available to the United States through the Secretary of the Interior or his authorized representative, any engineering data and other data desired by said Secretary bearing on the suitability of the dam site and gravel beds, and sufficiency of title thereto, and bearing on the extent and validity of title to the water rights agreed to be conveyed.

Conveyance of and Payment for Properties and Rights

13. (a) The District shall execute and acknowledge in the proper manner a deed in the form annexed hereto marked Exhibit A, describing the properties and rights herein agreed to be conveyed and designating the United States as grantee; and shall, within 15 days after written notice

that this contract has been executed for and on behalf of the United States deliver said executed deed in escrow to the Madera Branch, Bank of America National Trust and Savings Association, California. Said deed shall be held as an escrow (1) to be delivered to the United States within fifteen (15) days after the Secretary has given written notice to the District that the United States will proceed wih actual construction of all or a portion of said Friant Dam, and said Madera Canal within a period of six (6) months thereafter, or (2) to be redelivered to the District in the event this contract is terminated as hereinafter [fol. 63] provided. Expenses incidental to escrowing said deed shall be borne by the District.

(b) The United States hereby agrees, on the terms herein expressed, to purchase the properties and rights agreed to be conveyed for the sum of Three Hundred Thousand Dollars ($300,000.00). Payment of said sum shall be made, as follows:

(i) By payment within ninety days from and after delivery of said deed to the United States of such sum (but not in excess of said consideration) as may be necessary to pay the balance due, if any, of the purchase price agreed to be paid by the District, as Vendee or condemnor, to the Vendors of the lands described in subdivisions (a) and (b) of Article 12 hereof; and

(ii) In the event the District shall, subsequent to the delivery of the deed as herein provided, furnish the United States with a certified copy of a resolution of its Board of Directors, reciting that the District desires a part or all of the balance of said consideration remaining after making the payment, as provided for in paragraph (i) above, to be paid to it for the purpose of defraying the cost of procuring and installing facilities for the distribution of water to the lands within the same, then the United States shall, within ninety days from and after the receipt of said certified copy of said resolution, pay to the District all of the balance of said consideration, or the portion thereof specified in said resolution.

[fol. 64] (iii) In the event any portion of said consideration is not absorbed in pursuance of the provisions of paragraphs (i) and (ii) above, then the same shall be credited to the District as an advance, to be applied in so far as it may go, in payment of charges, as they become due and payable by the District, for such supplemental water supply as it may purchase from the United States; *provided, however,* that in event the District shall furnish the United States with a certified copy of a resolution of its Board of Directors that it does not intend to contract with the United States for a supplemental water supply as provided by Subdivision (e) of Article Fourteen (14) hereof, then and in such event the balance of the purchase price due the District hereunder shall be paid to the District by the United States within ninety (90) days after the United States has been furnished with the said copy of said resolution.

(iv) All apyments required to be made by the United States by the provisions of this agreement shall be made to the District by United States warrant or disbursing officer's check.

(c) In the event that the United States does not commence the construction of all or a portion of said Friant Dam and said Madera Canal within thirty-six (36) months after the District has delivered the executed deed to the [fol. 65] escrow holder as above provided, the District may at its option and at such time as it may so desire, declare this contract terminated and ended, whereupon all rights and obligations of the parties hereunder shall terminate, and thereupon the deed shall be delivered up to the District for cancellation. If the deed has been delivered to the United States, the United States will, if and when so provided by Act of Congress, reconvey to the District all of the properties herein described upon repayment to the United States that part of the purchase price theretofore paid to District. Said termination by the District of this contract shall be effected by depositing a written notice of exercise of such option in the United States Post Office in the City of Madera, County of Madera, State of Califor-

nia, postage prepaid, directed to the Secretary of the Interior, Washington, D. C.

(d) The United States agrees that the Madera Canal feature of the Central Valley Project will be constructed from the said Friant Dam to a point on Ash Creek, a branch of the Chowchilla River, above the confluence of Ash Creek and Berenda Slough, and completed for service substantially concurrently with the completion of construction of said Friant Dam and Reservoir, and will have a normal initial capacity of not less than 1000 cubic feet per second, with not less than normal capacities throughout its length progressively diminished in proportion to the acreage to be served by the respective sections of the said canal, and with waste way facilities adequate in the opinion of the Secre- [fol. 66] tary to render the operation of the canal practicable and safe, provided that each closed structure in said canal shall have a capacity 50% in excess of the normal capacity of the canal immediately below the said structure.

(e) If and when the said Friant Dam and Reservoir shall be utilized for storage and diversion of water to Friant-Kern Canal, the said Madera Canal shall contemporaneously therewith be made available to carry to the District that portion of the water to which the District may be then entitled.

Right of District to Acquire Supplemental Water Right

14. (a) The District shall be entitled, as hereinafter provided, to purchase a supplemental supply of water from Friant Dam and Reservoir (to be made available for service through the Madera Canal and measured at the points of delivery along said canal) in an average annual supply up to, but not exceeding, 270,000 acre feet, which at the option of the District shall include up to, but not to exceed fifteen per centum (15%) of the total amount of "Class One Water" as herein defined.

(b) "Class One Water" shall, as it is tentatively fixed, mean and include the first eight hundred thousand (800,000) acre feet of water per annum which can be made available through the operation of the Central Valley Project by and

through the Friant Dam and Reservoir at points along the Madera and Friant-Kern Canals. Further announcement [fol. 67] as to the amount of water to comprise "Class One Water" shall, however, be made by the Secretary at or prior to the time the notice to the District provided for in Subdivision (e) of this article is given. Said "Class One Water" shall be primarily for use as a stable and dependable surface supply to be delivered at points along said canals, with seasonal distribution, so far as practicable in accordance with the irrigation requirements of all such purchasers. Contracts for "Class One Water" shall be for a fixed percentage of the available supply and each contractor will each year be entitled to, and pay for, such percentage of the available total supply of "Class One Water".

(c) "Class Two Water" shall mean and include all water which can be made available through the operation of the Central Valley Project by and through the Friant Dam and Reservoir at points along the Madera and Friant-Kern Canals other than and in excess of "Class One Water". Said "Class Two Water" is intended primarily, but not exclusively, for use in augmenting and recharging underground storage. Contracts for "Class Two Water" shall entitle each contractor to a fixed percentage of the total of "Class Two Water" at any time available and shall fix the extent to which the contractor shall pay for the water contracted for and available to him if not fully used.

(d) Contracts for water shall be subject to a set of regulations to be issued by the Secretary prior to the execution [fol. 68] of any such contracts, which regulations shall among other things set out how project waters flowing into Friant Reservoir shall be reserved for the fulfillment of "Class One Water" contracts, including the right of hold-over storage; how the available storage capacity shall be utilized for serving "Class One Water", "Class Two Water", and flood control; the standard seasonal distribution of "Class One Water" deliveries and permissible variations; minimum and maximum limitations for rates of delivery of "Class Two Water"; charges for "Class One Water" and "Class Two Water" and times of payment therefor and for revisions thereof from time to time; disposition of sur-

plus project water not being used by contractors for "Class One Water" and Class Two Water"; and extension, amendment, and revision of such regulations.

(e) Whenever the United States shall be prepared to furnish service for irrigation or other purposes from Friant Reservoir and at a date not later than that upon which water shall be offered for sale to any prospective water user, the United States shall notify the District in writing relative to the availability and character of such service, and shall define the classes and quantities of service then and thereafter to be made available and the respective prices and methods of payment therefor. The District shall have six (6) months from the date of receipt of said notice within which to contract for the purchase of water on the basis of the classes and quantities of service so offered to [fol. 69] the District; provided, that, having due regard for the District's procedure required or expedient in negotiating for and securing approval of such contract, the Secretary may grant such extensions of time as he deems desirable. It is mutually understood between the parties hereto that it is not possible at this time to fix a price to paid by the District for said water, but the United States agrees that the cost of said water to the District shall not exceed charges made to others than the District for the same class of water and service from the said Friant Dam and Reservoir.

(f) It is understood and agreed that the District may, at its option, at any time prior to the execution of the contract covering the sale of and delivery to the District of a supply of water from Madera Canal as herein contemplated, exclude from the District not to exceed 40,000 acres of the present area thereof, and may include not to exceed 10,000 acres at present outside the boundaries of the District.

Effect If Breaches of Contract

15. The waiver of a breach of any of the provisions of this contract shall not be deemed to be a waiver of any other provision hereof or of a subsequent breach of such provision.

Responsibility for Interruptions

16. In the event the performance, in whole or in part, of the obligations of the respective parties under this contract, is hindered, interrupted, or prevented by war, strikes, lockouts, fire, act of God, or by other similar or different acts [fol. 70] of civil or military authorities, or by any cause beyond the control of the respective parties hereto, whether similar to the causes herein specified or not, the obligations of the respective parties under this contract shall be suspended to the extent and for the time that performance thereof is prevented or affected by such hindrance, interruption or prevention, but due diligence shall be observed by the respective parties hereto, so far as lies in their power, in performing their respective obligations under this contract.

Contingent upon Appropriations

17. If the operations of this contract extend beyond the current fiscal year or exceed in volume the amount of money made available for its completion through appropriation by Congress, or allotments under the provisions of the Emergency Relief Appropriation Act of 1935, approved April 8, 1935 (49 Stat. 115), it is understood that this contract is made contingent upon Congress making the necessary appropriations or upon the necessary allotments being made under the Emergency Relief Appropriation Act of 1935, for expenditures hereunder after such current year has expired or after such previous appropriation or allotment has been exhausted. In case such appropriation or allotment as may be necessary to carry out this contract is not made, the District hereby releases the United States from any and all liability arising from or due to such appropriation or allotment not being made.

[fol. 71] *Covenant Against Contingent Fees*

18. The District warrants that it has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the United States the right to annul the contract, or in its discretion to deduct

from the contract price or consideration the amount of such commission, percentage, brokerage or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the contractors for the purpose of securing business.

Officials Not to Benefit

19. No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

Successors and Assigns Bound

20. This contract shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto, including but not limited to any successor of the United States, in and to the ownership or operation of Friant Dam and Reservoir or Madera Canal, or both.

IN WITNESS WHEREOF, the parties hereby, to their respective officers thereunto duly authorized, have caused this [fol. 72] contract to be executed in duplicate, the day and year first above written.

THE UNITED STATES OF AMERICA,

By Harry Slattery
Under Secretary of the Interior

MADERA IRRIGATION DISTRICT,

By J. A. Secara
President

Attest:

Harry Barnes
Secretary

(SEAL)

[fol. 78] [File endorsement omitted]

[fol. 79] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF MADERA

No. 8502

[Title omitted]

ANSWER OF DEFENDANT, THE PEOPLE OF THE STATE OF CALIFORNIA, AND ANSWER OF THE DEFENDANT WATER PROJECT AUTHORITY OF THE STATE OF CALIFORNIA

Comes now the Attorney General of the State of California and appears and answers for the People of the State of California, and for the Water Project Authority of the State of California, pursuant to the request of C. H. Purcell, Chairman of said Authority, by letter dated July 23, 1951, which letter was accompanied by a copy of the Resolution of the Water Project Authority, dated March 27, 1951, both of which are attached hereto and marked Exhibits "A" and "B" respectively, and are referred to and incorporated in this answer as if set forth at length herein, and alleges in behalf of said defendants as follows:

I.

That the State of California is one of the United States of America; that this answering defendant appears in the sovereign governmental, and proprietary capacities of [fol. 80] said State, in its own interest and for the protection of its own rights; also as *parens patriae*, in the interest of and for the protection of all its citizens, residents, landowners and water users, and its agency, the plaintiff district, and to protect the integrity and proper application of its Constitution and laws respecting water and the use thereof, water rights, contracts, property and property rights; also as trustor of an express trust, hereinafter described which trust relates to the use of water in the Central Valley Project hereinafter mentioned; also as absolute owner of the corpus of the water to be used in and by said Central Valley Project and as owner of the right of reversion of any rights to the use of such water which may be forfeited or otherwise terminated for nonuse or otherwise; and as trustee for the use and benefit

of the beneficiaries of the Central Valley Project of the right to apply to beneficial use for irrigation in said Central Valley Project certain waters of the Sacramento and San Joaquin Rivers and streams tributary thereto, which waters will be commingled and used for the purposes of said project. That the Water Project Authority of the State of California is a body politic and corporate organized and existing under the laws of the State of California and is a State agency concerned with the construction, operation and maintenance of the Central Valley Project.

II.

Allege that Central Valley Project is a multiple-purpose [fol. 81] project designed and planned for the general purposes of irrigation of arid lands in the Great Central Valley of California, improvement of navigation, river regulation, flood control, incidental development of hydroelectric power, repulsion of salt water within the delta of the Sacramento and San Joaquin Rivers, and other purposes; that the Great Central Valley of California is the valley which lies in the basin of the Sacramento and San Joaquin Rivers, and their tributaries; that said project contemplates the use in said valley for irrigation, municipal, domestic, power and other beneficial purposes, of the water of the Sacramento and San Joaquin Rivers and their tributaries, that said waters arise, flow and discharge into the Pacific Ocean wholly within the State of California; that there are no public lands of the United States in said Great Central Valley; that said project was planned and generally designed by the State of California; that the plans, purposes and features of said project are substantially as set out and described in Bulletins Nos. 25, 26 and 29 of the Division of Water Resources, Department of Public Works, of the State of California, which bulletins constitute reports submitted by said division to the California Legislature of 1931 pursuant to acts of said legislature requiring the preparation and submission of said reports; that said bulletins are hereby referred to and incorporated by reference in this answer.

[fol. 82] III.

Allege that by act of its Legislature adopted August 5, 1933 and effective January 13, 1934 (California Statutes 1933, p. 1042) the State of California authorized the construction of the Central Valley Project and created a state agency designated "Water Project Authority of the State of California," and authorized said Authority to construct, maintain and operate said project and to use therefor the proceeds of sale of certain state bonds authorized by said Act; that following the adoption of said Act it became and was impracticable for the state to sell said bonds and construct the project; that by the Acts of Congress designated the Emergency Relief Appropriation Act of 1935 and the Rivers and Harbors Act of 1935, by executive orders signed by the President September 10, 1935, and November 16, 1935, a finding of feasibility signed by the Secretary of the Interior and approved by the President December 2, 1935, and the Acts of Congress designated the Rivers and Harbors Act of 1937, and the Rivers and Harbors Act of 1940, and the Act of Congress approved October 14, 1949, Public Law No. 356, 81st Congress, first session, and the Act of Congress approved September 26, 1950, Public Law 839, 81st Congress, second session, the Secretary of the Interior was authorized to construct said Central Valley Project and has undertaken and entered upon the construction of said project; that certain features of said project have been constructed and others are ap-
[fol. 83] proaching completion of construction.

IV.

Allege that the major engineering features of said project include:

(1) Shasta Dam and reservoir and hydroelectric power plant on the Sacramento River in Shasta County, California, with certain electric transmission lines leading from said power plant, and appurtenances thereof;

(2) Contra Costa Conduit, a canal leading from the Sacramento-San Joaquin delta to the vicinity of Martinez;

(3) Delta Cross-Channel, to conduct water of and from the Sacramento River and its tributaries across the said delta to the lower San Joaquin River, together with the Tracy Pumping Plant and the Delta-Mendota Canal, to convey water from said Delta Cross-Channel to the Mendota Pool in the San Joaquin River;

(4) Friant Dam and reservoir on the Upper San Joaquin River near Friant, Fresno County;

(5) Madera Canal, to conduct water stored in Friant reservoir northerly to a point on Chowchilla River;

(6) Friant-Kern Canal, to conduct water stored in Friant reservoir southerly to a point on Kern River near Bakersfield.

V.

Allege that the contract dated July 27, 1939, between the United States and the San Joaquin and Kings River [fol. 84] Canal and Irrigation Company, Incorporated, and other corporations, commonly referred to as the "Exchange Contract", and mentioned in Article 10 (d) of the contract, which is sought to be validated in plaintiff's complaint herein, and by the contract dated July 27, 1939, between the United States and Miller & Lux Incorporated and Gravelly Ford Canal Company, corporations doing business in California, and by other comparable contracts, the United States acquired certain appropriative and prescriptive rights; contract rights and estoppels against the exercise by said companies and others of riparian and prescriptive rights, claimed by them to use for irrigation and other purposes, waters of the San Joaquin River and its tributaries, and the United States in said "Exchange Contract" agreed to deliver to the contracting companies, in lieu and in exchange for their rights to the flow of the San Joaquin River, certain waters of the Sacramento River and its tributaries, to be imported to Mendota Pool through and by means of the Delta Cross-Channel, Tracy Pumping Plant and the Delta-Mendota Canal; that the United States entered into all of said contracts herein referred to in order that it might be able to store in Friant Reservoir, free of the claims of any other parties, waters of the San

Joaquin River arising above said reservoir and divert the same northerly through the Madera Canal and southerly through the Friant-Kern Canal; for irrigation of lands in the counties extending from Madera to Kern, in general along the easterly side of the San Joaquin Valley floor; [fol. 85] that it is intended and proposed by the contract herein sought to be validated that the United States shall deliver waters impounded in Friant Reservoir sometimes known as Millerton Lake and convey the same through the Madera Canal for irrigation of the lands in plaintiff district.

VI.

Allege that the State of California, acting through its Department of Finance and Director of Finance, pursuant to certain statutes adopted by the Legislature of California, heretofore filed certain applications with the Division of Water Resources of the Department of Public Works of California for the appropriation of unappropriated waters of the Sacramento and San Joaquin Rivers and their tributaries, for the use and benefit of the Central Valley Project and the owners of lands to be irrigated therefrom; that by assignments, made pursuant to said Statutes, the State of California, acting through its Department of Finance and Director of Finance, assigned to the United States for the use and benefit of said Central Valley Project certain of said applications, to-wit: by assignment dated September 3, 1938, assigned Application No. 5625 to appropriate water of the Sacramento River at Shasta Dam for power purposes, and Application No. 5626 to appropriate water of the Sacramento River at Shasta Dam for irrigation and domestic use, saline and flood control, and navigation purposes, and Application No. 9364 to appropriate water of the Sacramento River at points of diversion [fol. 86] located along the Sacramento River from Shasta Dam to the Sacramento-San Joaquin Delta and on the channels of said delta, for irrigation and domestic use, saline and flood control, and navigation purposes, and Application No. 9365 to appropriate water of the Sacramento River at Shasta Dam for power purposes; and by assignment dated September 30, 1939, assigned Application No.

5637 to appropriate water of the San Joaquin River at Friant Dam for power purposes, and Application No. 5638 to appropriate water of the San Joaquin River at Friant Dam for irrigation, domestic and flood control purposes, and Application No. 9369 to appropriate water of the San Joaquin River at Temperance Flat Dam in Sections 24 and 25, T. 10, S.R. 21E. M. D. B. & M. and at Friant Dam for irrigation, domestic and flood control purposes, that a true copy of said assignment dated September 3, 1938, is hereto attached, marked Exhibit "C" and a true copy of said assignment dated September 30, 1939, is hereto attached, marked Exhibit "D" and said copies are by reference made a part hereof.

VII.

Allege that the State of California has not assigned to the United States, nor to anyone, any of the applications to appropriate water on the tributaries of the Sacramento and San Joaquin Rivers, hereinabove mentioned, except as specified in application 9364, referred to in paragraph VI hereof.

VIII.

Allege that by virtue of the terms of said assignments [fol. 87] the State of California has become and is the trustor or grantor of an express trust; the United States has become and is the Trustee of that trust; the landowners to acquire rights to the use of water from the works of the Central Valley Project, including the landowners of plaintiff district, have become and are the beneficiaries of that trust; that any and all claims or interests of the United States obtained by the contract, mentioned in Article 10 (d) of the contract herein sought to be validated, and similar or comparable contracts, and under the assignments, Exhibits "C" and "D" hereto are held by the United States as such trustee under said express trust and as a part of a trust fund or res for the use and benefit of the Central Valley Project and the landowners to acquire rights to the use of water from the works of said project, and in particular the landowners of plaintiff district; that the

State of California, as trustor or grantor and as *parens patriae*, is entitled to be heard, among other things, as to all matters relating to the administration and execution of said trust by said trustee and entitled to require that the trustee administer said trust according to its true intent and meaning.

IX.

Allege that said Central Valley Project will provide a stabilized source of supplemental water-supply for irrigation and other purposes for many hundreds of thousands of acres of land now under cultivation and irrigation in the [fol. 88] Great Central Valley of California; that the construction, operation and maintenance of said Central Valley Project will profoundly affect the economy and welfare of the people of at least 21 of the 58 counties of California, embracing more than half of the cultivated agricultural lands of the State; that twenty or more contracts between the United States of America and irrigation and water districts organized under California law, generally comparable in character to the contract herein sought to be validated, have been or will in the near future be executed and submitted to the courts of California for validation in actions similar to the case at bar; that questions of law and fact identical with or similar to those involved in the case at bar have been and will be presented in said future validation actions; that the original cost estimate of the Bureau of Reclamation, made in 1936, for the construction of said Central Valley Project was $170,000,000; that the last official estimate disclosed by the Bureau of Reclamation for the cost of construction of said Project, made in January, 1950, was $581,886,000; that said last estimate is believed to include the cost of the American River Development which was added to said project by Act of Congress adopted October 14, 1949, but does not include the cost of the Sacramento Valley Canals added to said project by Act of Congress adopted September 26, 1950; that the estimate of cost of said Sacramento Valley canals made by the Bureau of Reclamation in May, 1949, was from $40,000,000 to [fol. 89] $65,000,000; that said Secretary and said Bureau of Reclamation seek and have, by official report to Con-

gress, recommended the expansion of said Central Valley Project to include units and features in addition to those now authorized for construction by the Congress, which said Bureau estimates will cost in excess of $3,000,000,000; that said expanded Central Valley Project is generally described and outlined in the report of said Bureau entitled "Central Valley Basin," being Senate Document 113, Eighty-first Congress, first session, to which reference is hereby made; that the construction, operation and maintenance of said expanded Central Valley Project would profoundly affect the economy and welfare of the owners of several million acres of land, now irrigated or unirrigated, in the Great Central Valley of California, and of several millions of the citizens, residents, landowners and water-users of the State.

X.

Allege that the United States is one of the parties defendant described in the caption of plaintiff's complaint and in paragraph II of said complaint, and is a party to this action.

XI.

Allege that the validity of the contract marked Exhibit "A" to the complaint does not depend on whether the United States has rights to the water to be delivered by it pursuant to the contract or rights to the use thereof or title or [fol. 90] ownership thereto; and further that an adjudication of such rights to water or the use thereof or title or ownership thereto is not appropriate in this proceeding; and that to attempt or purport to make such an adjudication herein would be contrary to the best interests of the State and of the United States; and further, there are appended hereto true copies of correspondence between the Secretary of the Interior of the United States and the Attorney General of the State of California consisting of three letters as follows: letter dated March 5, 1951, signed by Oscar L. Chapman, as Secretary of Interior, marked Exhibit "E"; letter dated March 22, 1951, signed by Edmund G. Brown, as Attorney General, marked Exhibit "F"; letter dated March 27, 1951, signed by Oscar L. Chap-

man as aforesaid and marked Exhibit "G". That aforesaid Exhibits are hereby referred to and incorporated in this answer as if set forth at length herein.

Wherefore, the State ~~of California~~ prays as follows: (1) that the plaintiff district's legal capacity and authority to enter into the contract, the proceedings on the part of the district for the authorization of the execution of the contract, and the execution of the contract between the Madera Irrigation District and the United States be confirmed and declared valid; and (2) that the decree in this proceeding recite that on the issues properly raised in this proceeding the decree is not required to and does not purport to be an adjudication of the right or interest of the [fol. 91] State of California or of its agencies, including but not limited to the Madera Irrigation District and the Water Project Authority, or of the right or interest of the United States or its agencies, or all or any of the above, in or to the waters or water rights or respecting the regulation of the use thereof under the laws of the State of California, involved in the Central Valley Project.

And Wherefore, the Water Project Authority which is not taking any position on the validity of the contract between the Madera Irrigation District and the United States, prays that the decree in this proceeding recite that on the issues properly raised in this proceeding the decree is not required to and does not purport to be an adjudication of the right or interest of the State of California or of its agencies including but not limited to the Madera Irrigation District and the Water Project Authority, or of the right or interest of the United States or its agencies, or any or all of the above, in or to the waters or water rights or respecting the regulation of the use thereof under the laws of the State of California, involved in the Central Valley Project.

Edmund G. Brown, Attorney General, State of California, B. Abbott Goldberg, Deputy Attorney General, Attorneys for People of the State of California and for the Water Project Authority of the State of California.

[fol. 92] EXHIBIT "A" TO ANSWER OF DEFENDANT, ETC.

EARL WARREN
GOVERNOR

WATER PROJECT AUTHORITY OF THE STATE OF CALIFORNIA

PUBLIC WORKS BUILDING
TWELFTH AND N STREETS
SACRAMENTO 5 CALIFORNIA

Chas G. Johnson
State Treasurer

C. H. Purcell
Director of Public Works

Thomas H. Kuchel
State Controller

James S. Dean
Director of Finance

Edmund G. Brown
Attorney General

A. D. Edmonston, State Engineer
Executive Officer

Address All Communications to Executive Officer.

July 23, 1951

Honorable Edmund G. Brown
Attorney General
State Building, Civic Center
San Francisco, California

Attention: Mr. B. Abbott Goldberg

Dear General Brown:

Your letter, dated July 13, 1951, to Mr. A. D. Edmonston, Executive Officer of the Water Project Authority, with reference to participation by the Authority in the contract validation proceeding brought in the Superior Court of Tulare County by the Saucelito Irrigation District has been brought to my attention. I have also been informed that a similar action for validation of contract has been brought by the Madera Irrigation District in the Superior Court for that County.

[fol. 93] In view of the action taken by the Water Project Authority at its regular meeting held on March 27, 1951, instructing the Attorney General to take such action as may be appropriate to protect the interests of the State of California and the Water Project Authority in a proceeding entitled "Ivanhoe Irrigation District vs. All Parties and Persons, Etc." it is requested that you enter an appearance in each of the new proceedings on behalf of the State and the Water Project Authority in conformance with the position already taken in the Ivanhoe case.

A copy of the resolution adopted by the Water Project Authority on March 27, 1951, is enclosed.

Very truly yours,

C. H. PURCELL
C. H. PURCELL
Chairman

Encl.

EXHIBIT "B" TO ANSWER OF DEFENDANT, ETC.

WATER PROJECT AUTHORITY OF THE STATE OF CALIFORNIA

PUBLIC WORKS BUILDING
TWELFTH AND N STREETS
SACRAMENTO, CALIFORNIA

CHAS G. JOHNSON
STATE TREASURER

C. H. PURCELL
DIRECTOR OF PUBLIC WORKS

THOMAS H. KUCHEL
STATE CONTROLLER

[fol. 94] JAMES S. DEAN
DIRECTOR OF FINANCE

EDMUND G. BROWN
ATTORNEY GENERAL

A. D. EDMONSTON
STATE ENGINEER
EXECUTIVE OFFICER

Address all Communications to Executive Officer.

Resolution Adopted by the Water Project Authority at Regular Meeting held on March 27, 1951

WHEREAS, there is now pending in the Superior Court of the State of California in and for the County of Tulare, a proceeding entitled "Ivanhoe Irrigation District vs. All Parties and Persons, Etc.," said proceeding being numbered 39627 in said Superior Court for the purpose of validating a contract entered into between said District and the United States for the delivery of water and construction of distribution facilities; and

WHEREAS, by order of said Court in said proceeding dated March 8, 1951, a default of all persons, excepting those who had filed appearances in said proceeding, was set aside so far as the Water Project Authority of the State of California was concerned, said order granting this Authority the opportunity of appearing in said proceeding if it be so disposed; and

WHEREAS, in said proceeding contentions have been made to the effect (1) that the title to the water proposed to be delivered to the Ivanhoe Irrigation District by the United States, acting by and through the Bureau of Reclamation [fol. 95] of the Department of the Interior, and the right of the State to require compliance with State law with reference to the obtaining of proper permits to appropriate said water and the rights of the State to impose and enforce conditions respecting methods of diversion and use of said water, all as provided by State law, are necessarily involved in the proceeding now pending, and (2) that a validation of the contract before the Court might supersede or impair the powers of the State with regard to the matters above mentioned; and

WHEREAS, the Attorney General of the State of California has expressed himself to this Authority that in his opinion a validation of the contract involved in the proceeding would have no effect whatever upon the title to the water proposed to be delivered to said District or to any other water acquired or to be acquired for purposes of the Central Valley Project or upon any other of the matters above mentioned, and that said matters are not in any way

involved in said proceeding; and that it is his intention to file in said proceeding an additional amendment to the answer therein specifically alleging and asserting the contentions involved in the aforesaid opinion, and requesting that the Court shall include in any final decree rendered in the said proceeding a clear and specific statement that the matters above mentioned are not therein involved and are not passed upon therein; and

WHEREAS, the Attorney General has received letters dated [fol. 96] March 5 and March 27, 1951, from Honorable Oscar L. Chapman, present Secretary of the Interior of the United States, expressing a like view, copies of said letters having been furnished to this Authority and included in its files; and

WHEREAS, any doubt as to whether the matters herein specified are involved in said proceeding can and should be resolved by specific declaration of the Court in any decree rendered therein that such matters are not involved and are not passed upon, or determined.

NOW, THEREFORE, BE IT RESOLVED BY THIS AUTHORITY, that the Attorney General be and he is hereby requested on behalf of this Authority to take such action as may be appropriate in the premises to protect the interests of the State of California and of this Authority by making every possible effort to the end that any final decree rendered in the above mentioned proceeding shall clearly and specifically state that the matters above mentioned are not involved in said proceeding and are not passed upon therein.

EXHIBIT "C" TO ANSWER OF DEFENDANT, ETC.

ASSIGNMENT

WHEREAS, under and by virtue of the provisions of an Act of the Legislature of the State of California, entitled "An Act authorizing the Department of Finance to appropriate waters in connection with the utilization and con- [fol. 97] servation of the water resources of the state in the development of a general or coordinated plan; authorizing the State Department of Finance to release or assign

such appropriations; authorizing the State Department of Finance to request other departments of the state or state officers to furnish services or assistance to make investigations in connection with the development of a general or coordinated plan for the utilization or conservation of the water resources of the State," approved April 29, 1927, being Chapter 286, Statutes of 1927, page 508, the State Department of Finance is directed and authorized, pursuant to the provisions of the Water Commission Act and the rules and regulations of the Division of Water Resources of the Department of Public Works, to make and file an application or applications for any water or the use thereof which in the judgment of the State Department of Finance is or may be required in the development and completion of the whole or any part of a general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State of California; and

WHEREAS, pursuant to the provisions of the aforesaid act, the State Department of Finance did, on the 30th day of July, nineteen hundred twenty-seven, file with the Division of Water Rights of the Department of Public Works of the State of California, those certain applications for permits to appropriate unappropriated waters of the Sacramento River, designated therein as Application Nos. [fol. 98] 5625 and 5626; and

WHEREAS, pursuant to the provisions of the aforesaid act, as amended, the State Department of Finance did, on the 2nd day of August, nineteen hundred thirty-eight, file with the Division of Water Resources of the Department of Public Works of the State of California, those certain applications for permits to appropriate unappropriated waters of the Sacramento River, designated therein as Applications Nos. 9364 and 9365; and

WHEREAS, the aforesaid Act of April 29, 1927, as amended by the Act approved June 12, 1931, being Chapter 720, Statutes of 1931, page 1513; the Act approved May 24, 1933, being Chapter 537, Statutes of 1933, page 1425; and the Act approved July 15, 1935, being Chapter 462, Statutes

of 1935, page 1518, provides, among other things, (a) that notwithstanding anything in said act contained, the State Department of Finance shall have power, in its discretion, to release from priority or to assign any portion of any of the appropriations that may be filed under the provisions thereof when such release or assignment is for the purpose of development not in conflict with any general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State, and (b) that no such priority shall be released, or assignment made of any such appropriation that will, in the judgment of the State Department of Finance, deprive the county in which such appropriated water originates, of any [fol. 99] such water necessary for the development of such county; and

WHEREAS, The United States of America is now engaged in the construction of that certain project known as and designated the Central Valley Project, California, a part of a general or coordinated plan for the development, utilization and conservation of the water resources of the State of California and which project was authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115), and the First Deficiency Appropriation Act, fiscal year 1936 (49 Stat. 1622), and reauthorized by Act of Congress approved August 26, 1937 (50 Stat. 844), and has requested the State Department of Finance to assign to the United States for the use and benefit of said project all right, title and interest in and to the said Applications Nos. 5625, 5626, 9364 and 9365, and such appropriations of the waters of said river as were made thereby, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder:

NOW, THEREFORE, in pursuance of the discretion and judgment vested in it by the aforesaid Act of April 29, 1927, as amended, the State Department of Finance, being fully advised in the premises, does hereby find and determine (a) that the assignment to the United States, in the form and substance hereinafter made, of the aforesaid applications Nos. 5625, 5626, 9364 and 9365, and such appropriations

[fol. 100] of the water of said river as were made thereby, and all right, title and interest therein and thereto, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder for the use and benefit of said Central Valley Project, California, is for a purpose of development not in conflict with any general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State of California, but is in furtherance thereof, and (b) that said assignment, in the form and substance hereinafter made, of the aforesaid applications will not, in the judgment of the State Department of Finance, deprive any county in which such appropriated water originates, of any such water necessary for the development of such county; and

The State Department of Finance, in consideration of the foregoing and of the general benefits to accrue to the State of California from the construction by The United States of America of the Central Valley Project, California, established and authorized as aforesaid, does hereby transfer, assign and set over to The United States of America, and its assigns, for the use and benefit of said Central Valley Project, California, all its right, title and interest in and to the aforesaid applications Nos. 5625, 5626, 9364 and 9365, and such appropriations of the water of said river as were made thereby, and all right, title and interest in and to the water and the use of water covered thereby or [fol. 101] initiated thereunder, subject to depletion of the stream flow above Shasta (formerly Kennett) Dam by the exercise of lawful rights to the use of water for the purpose of development of the counties in which such water originates, whether such rights have been heretofore or may be hereafter initiated or acquired, such depletion not to exceed in the aggregate four million five hundred thousand (4,500,000) acre-feet of water in any consecutive ten-year period, and not to exceed a maximum depletion in any one year in excess of seven hundred thousand (700,000) acre-feet.

In witness whereof, the Department of Finance of the State of California, acting by and through the Director

of Finance, has caused this assignment to be executed this 3rd day of September, A. D. nineteen hundred thirty-eight.

DEPARTMENT OF FINANCE OF THE STATE OF CALIFORNIA

By ARLIN E. STOCKBURGER
Director of Finance.

(SEAL)

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss.

On this 3rd day of September, A. D. nineteen hundred thirty-eight, before me, R. N. Philpot, a Notary Public in and for the said County and State, personally appeared Arlin E. Stockburger, Director of Finance of the State of California, known to me to be the Director of Finance of the State of California, the Department of the State of Cali- [fol. 102] fornia that executed the within instrument, known to me to be the person who executed the within instrument, on behalf of the Department of Finance of the State of California, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

R. N. PHILPOT
Notary Public in and for said County and State.

(NOTARY SEAL)

My Commission expires
NOVEMBER 25, 1940

EXHIBIT "D" TO ANSWER OF DEFENDANT, ETC.

ASSIGNMENT

WHEREAS, under and by virtue of the provisions of an Act of the Legislature of the State of California, entitled "An act authorizing the Department of Finance to appropriate waters in connection with the utilization and conservation of the water resources of the state in the development of a general or coordinated plan; authorizing the State Department of Finance to release or assign such appropriations; authorizing the State Department of Finance to request other departments of the state or state officers to furnish services or assistance to make investigations in connection with the development of a general or coordinated [fol. 103] plan for the utilization or conservation of the water resources of the State," approved April 29, 1927, being Chapter 286, Statutes of 1927, page 508, the State Department of Finance is directed and authorized, pursuant to the provisions of the Water Commission Act and the rules and regulations of the Division of Water Resources of the Department of Public Works, to make and file an application or applications for any water or the use thereof, which in the judgment of the State Department of Finance is or may be required in the development and completion of the whole or any part of a general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State of California; and

WHEREAS, pursuant to the provisions of the aforesaid act, the State Department of Finance did, on the 30th day of July, nineteen hundred twenty-seven file with the Division of Water Rights of the Department of Public Works of the State of California, those certain applications for permits to appropriate unappropriated waters of the San Joaquin River, designated therein as Applications Nos. 5637 and 5638; and

WHEREAS, pursuant to the provisions of the aforesaid act, as amended, the State Department of Finance did, on the 2nd day of August, nineteen hundred thirty-eight, file with the Division of Water Resources of the Department of Public Works of the State of California, that certain

application for permit to appropriate unappropriated [fol. 104] waters of the San Joaquin River, designated therein as Application No. 9369; and

WHEREAS, the aforesaid Act of April 29, 1927, as amended by the act approved June 12, 1931, being Chapter 720, Statutes of 1931, page 1513; the act approved May 24, 1933, being Chapter 537, Statutes of 1933, page 1425; and the act approved July 15, 1935, being Chapter 462, Statutes of 1935, page 1518 provides, among other things, (a) that notwithstanding anything in said act contained, the State Department of Finance shall have power, in its discretion, to release from priority or to assign any portion of any of the appropriations that may be filed under the provisions thereof when such release or assignment is for the purpose of development not in conflict with any general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State, and (b) that no such priority shall be released, or assignment made of any such appropriation that will, in the judgment of the State Department of Finance, deprive the county in which such appropriated water originates, of any such water necessary for the development of such county; and

WHEREAS, The United States of America is now engaged in the construction of that certain project known as and designated the Central Valley Project, California, a part of a general or coordinated plan for the development, utilization and conservation of the water resources of the [fol. 105] State of California and which project was authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115) and the First Deficiency Appropriation Act, fiscal year 1936 (49 Stat. 1622), and reauthorized by Act of Congress approved August 26, 1937 (50 Stat. 844), and has requested the State Department of Finance to assign to the United States for the use and benefit of said project all right, title and interest in and to the said Applications Nos. 5637, 5638 and 9369, and such appropriations of the waters of said river as were made thereby and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder;

NOW, THEREFORE, in pursuance of the discretion and judgment vested in it by the aforesaid act of April 29, 1927, as amended, the State Department of Finance, being fully advised in the premises, does hereby find and determine (a) that the assignment to the United States, in the form and substance hereinafter made, of the aforesaid Applications Nos. 5637, 5638 and 9369, and such appropriations of the water of said river as were made thereby, and all right, title and interest therein and thereto, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder for the use and benefit of said Central Valley Project, California, is for a purpose of development not in conflict with any general or coordinated plan looking towards the develop- [fol. 106] ment, utilization or conservation of the water resources of the State of California, but is in furtherance thereof, and (b) that said assignment, in the form and substance hereinafter made, of the aforesaid applications will not, in the judgment of the State Department of Finance, deprive any county in which such appropriated water originates, of any such water necessary for the development of such county; and

The State Department of Finance, in consideration of the foregoing and of the general benefits to accrue to the State of California from the construction by the United States of America of the Central Valley Project, California, established and authorized as aforesaid, does hereby transfer, assign and set over to the United States of America, to be exercised by and through its Bureau of Reclamation, for the use and benefit of said Central Valley Project, California, all its right, title and interest in and to the aforesaid Applications Nos. 5637, 5638 and 9369, and such appropriations of the water of said river as were made thereby, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder.

IN WITNESS WHEREOF, the Department of Finance of the State of California, acting by and through the Director of Finance has caused this assignment to be executed this 30th day of September, A. D., nineteen hundred thirty-nine.

DEPARTMENT OF FINANCE OF THE
STATE OF CALIFORNIA,

[fol. 107]

PHIL S. GIBSON
Director of Finance,

BY: GEORGE KILLION
GEORGE KILLION
DEPUTY.

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

On this 30th day of September, A. D., nineteen hundred thirty-nine, before me, LOIS K. DAUBE a Notary Public in and for the said County and State, personally appeared George Killion, Deputy Director of Finance of the State of California, known to me to be the Deputy Director of Finance of the State of California, the Department of the State of California that executed the within instrument, known to me to be the person who executed the within instrument, on behalf of the Department of Finance of the State of California, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

LOIS K. DAUBE
Notary Public in and for
said County and State.

My Commission expires
JULY 16, 1942

CERTIFICATE 4555
APPLICATION .....
PERMIT .....
LICENSE .....

STATE OF CALIFORNIA)
DEPARTMENT OF PUBLIC WORKS) *ss.*
DIVISION OF WATER RESOURCES)

[fol. 108] I, Timothy C. Cronin, Certification Clerk of the Division of Water Resources, Department of Public Works, State of California, do hereby certify that I have carefully compared the photostatic copy of assignment to which this certificate is attached, with the original of said assignment in the records of the Division of Water Resources, Department of Public Works, State of California and that the same is a true, full, complete and correct copy of the original thereof on file in this office.

WITNESS my hand and seal of the Department of Public Works State of California, this 13th day of October, 1950.

TIMOTHY C. CRONIN
Certification Clerk, Division of Water Resources.

EXHIBIT "E" TO ANSWER OF DEFENDANT, ETC.

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON 25, D. C.

March 5, 1951
Air Mail

My dear General Brown:

I am glad to be able to give you my views on certain questions which you have conveyed to me orally through Chief Deputy Attorney General Levit concerning the effect of validation proceedings under California law upon the resolution of water rights questions under State and Federal law.

I have discussed these questions with our attorneys and, [fol. 109] as we understand them, we are in accord with your views. As I understand it, the purpose and effect of a validation proceeding, which is required by Federal Statute and permitted under the California statutes, is merely to obtain a judicial decree confirming the authority of the district to enter into the particular contract with the United States and thereby confirming the validity of the contract, just as in the case of a bond validation proceeding. Questions with respect to the historical, present, and future ownership of water or water rights would seem to me to be immaterial to the question whether a particular contract for water service or for the construction of a distribution system, or both, is a valid one and to the question of the authority of the district to enter into it. In short, I do not understand that a finding that the contractual obligations are valid is determinative of the title to the water.

If this is true, then it follows that any controversy with respect to whether "ownership" of the water which the United States contracts to furnish to the district is in the United States, the State, or elsewhere (a controversy which to me would seem to be wholly unnecessary as a practical matter in any event) would not appear to be for resolution in a proceeding for the validation of a contract.

Furthermore, the resolution of the question whether an individual water user or a district may have a legal right to demand the continued delivery of project water after the [fol. 110] expiration of the 40-year term of a water service contract clearly is not affected by a finding that the contract itself is binding *during* its own express term.

As for rights to the use of water which have already vested and which are recognized under State law, it is elementary that they cannot be adversely affected by the operations of the United States without just compensation.

These views, I am informed, were expressly stated by counsel for the Bureau of Reclamation during oral argument on the demurrer to the complaint in the Ivanhoe Irrigation District proceeding, in which they appeared as amici curiae.

I hope that I have adequately responded to your inquiry and I and Washington and Sacramento representatives of the Bureau of Reclamation will be glad to cooperate with you in any further way we can.

Sincerely yours,

(SGD) OSCAR L. CHAPMAN
Secretary of the Interior

Hon. Edmund G. Brown
Attorney General of California
State Building
San Francisco, California.

Copy to: Regional Director, Sacramento, Calif.
Regional Counsel, Sacramento, Calif.

[fol. 111] EXHIBIT "F" TO ANSWER OF DEFENDANT, ETC.

STATE OF CALIFORNIA

EDMUND G. BROWN
ATTORNEY GENERAL

BERT W. LEVIT
CHIEF DEPUTY ATTORNEY GENERAL

H. H. LINNEY
CHIEF ASSISTANT ATTORNEY GENERAL
Division of Civil Law

ARTHUR H. SHERRY
CHIEF ASSISTANT ATTORNEY GENERAL
Division of Criminal Law and Enforcement.

DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

March 22, 1951

Honorable Oscar L. Chapman
Secretary of the Interior
United States Dept. of the Interior
Washington 25, D. C.

Dear Mr. Secretary:

I have not yet had an opportunity to acknowledge your letter of March 5, relative to the pending validation suits, and do so now.

Your letter correctly states my views with respect to the purpose and effect of these proceedings, and I am glad to note that you concur. However, I should appreciate a further expression from you concerning the scope and effect of the contracts themselves, which, of course, are the basis [fol. 112] of the validation proceedings; and in particular, I refer to the so-called water service and distribution system contract, between the United States and the Ivanhoe Irrigation District which is now before the Superior Court of Tulare County for validation.

It is my view that this contract is not intended to and does not deal with, determine, or settle any questions with respect to the historical, present or future claims of ownership of water or water rights that are now or that may hereafter be urged by the United States the State of California, the Ivanhoe Irrigation District, or individual or corporate landowners or users of the water, the furnishing of which is provided for by the said contract.

Statement of your views on this additional matter will be appreciated. It is understood, of course, that the contract, if confirmed, will itself obligate the United States to furnish and entitle the District and the landowners to receive certain quantities of water in the circumstances and upon the terms and conditions therein recited, and nothing stated in this letter (or concurred in by you, if you do concur,)

is meant to disparage, limit, or modify in any way any of the provisions contained in the said contract.

Yours very truly,

EDMUND G. BROWN
ATTORNEY GENERAL

EGB:AS

[fol. 113] EXHIBIT "G" TO ANSWER OF DEFENDANT, ETC.

UNITED STATES
DEPARTMENT OF THE INTERIOR

OFFICE OF THE SECRETARY
WASHINGTON 25, D. C.

March 27, 1951

My dear General Brown:

In your letter of March 22 you have expressed certain views concerning the scope and effect of the water service and distribution system contract between the United States and the Ivanhoe Irrigation District, for which a validation proceeding is now pending in the Superior Court of California in and for the County of Tulare, and you have requested my opinion on the accuracy of those views.

I am in agreement with what I understand to be your views, and, for reasons which will be set forth, I do not regard either the validation proceeding or the contract itself as affecting the ownership of water or water rights.

As you know, the Central Valley Project supply from which the Bureau of Reclamation will furnish irrigation and municipal water to contracting entities is derived from two sources: (1) certain applications for appropriations filed with the California Division of Water Resources by the State Director of Finance and assigned by him to the United States pursuant to section 10504 of the California Water Code, as well as certain applications for appropriations which have been filed directly by the United States with the State Division of Water Resources, pursuant to [fol. 114] Section 8 of the Reclamation Act of 1902, and (2) contracts with and deeds from a large number of individuals and corporations, by which the United States has

acquired rights with respect to the water of the San Joaquin River. Principal in the latter category is the so-called purchase and exchange contract with Miller and Lux, Inc.

The United States, in turn, under the authority of section 9 (e) of the Reclamation Project Act of 1939, is entering into contracts with districts organized under California law by which it agrees to furnish certain amounts of project water to the districts for a period of 40 years on certain conditions and at defined rates. I cannot conceive that these contracts in any way raise, involve, or resolve any questions with respect to the ownership of water or water rights. When the contracts have been decreed to be valid and binding the districts have enforceable rights to demand that certain quantities of water be furnished to them by the United States in accordance with the terms of the contracts, and the United States has enforceable rights to collect payments from the districts in accordance with the terms of the contracts.

More specifically, it is the view of the Department that the position of an irrigation district or a landowner in the Central Valley Project with respect to the ownership of water or water rights is no different from what it would have been had the State of California pursued its original [fol. 115] plan to construct and operate the Central Valley Project through the State's Water Project Authority, and to deliver water to the districts under the form of long-term contract then proposed. As I already have pointed out, the sources of the project water supply are in transactions which took place pursuant to and in accordance with the law of California.

Sincerely Yours,

(Sgd.) Oscar L. Chapman
Secretary of the Interior.

Hon. Edmund G. Brown
Attorney General of California
State Building
San Francisco, California.

[fol. 189] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF MADERA

No. 8502

ANSWER OF WARREN OCHELTREE, ET AL. TO THE SECOND AMENDED COMPLAINT—Filed February 1, 1952

Come now Warren Ocheltree and Clarice A. Ocheltree, his wife, Mansel Ocheltree, Althea A. Ocheltree, his wife, Jerold Ocheltree, Hazel O. Ocheltree, Phillip Albonico, and Jane E. Albonico, his wife, as parties in interest, including the ownership of land and water and water rights within the Madera Irrigation District and/or other rights involved within the issues herein, and without waiving our several or joint special and/or general demurrers heretofore made and filed herein, do hereby make and file this, our Answer to the Second Amended Complaint of the Madera Irrigation District, and pray that this Court declare the rights and duties of the parties and determine the issues raised in said Second Amended Complaint and by the Demurrers herein and raised by this Answer, and [fol. 190] in connection with said Second Amended Complaint and this Answer, admit, deny and allege as follows:

I

That each of these answering Defendants is the owner of real property within the boundary of the Madera Irrigation District; that said real property has been assessed by the Madera Irrigation District ever since the organization of that district and these answering Defendants respectively and their respective predecessors in interest have paid said assessments; that the respective properties of these Defendants so owned by them and within the boundaries of said district are by the terms of the purported contract marked "Exhibit A" attached to the Second Amended Complaint made liable for the obligations of the Madera Irrigation District to the United States and said lands will be assessed by said district and these Defendants will respectively be required by said district to pay said assessments; that the individual land holdings of each of these answering Defendants are described on the assess-

ment rolls of the Madera Irrigation District as is more particularly set forth on "Exhibit I," attached hereto, for each of these answering Defendants, respectively.

II

Admit the allegations set forth in paragraph I of the second amended complaint.

III

Deny generally and specifically each, all and every of [fol. 191] the allegations, except as hereinafter admitted or alleged, set forth in paragraphs II, III, IV, V and VI of said Second Amended Complaint.

IV

Admit that the Board of Directors of the Madera Irrigation District claim to have, on or about the 14th day of May, 1951, signed a purported contract, a copy of which is set forth and attached as "Exhibit A" to said Second Amended Complaint.

V

Admit that said document "Exhibit A" attached to the plaintiff's Second Amended Complaint was by said Board of Directors of said Madera Irrigation District submitted to the California Districts Securities Commission for its examination and report, and admits that on or about the 26th day of March, 1951, the California Districts Securities Commission made its report with reference to said document, "Exhibit A" attached to said Second Amended Complaint, but in this connection these Defendants allege that said report was not an approval of said purported contract marked "Exhibit A" as such, but was the method adopted by said Districts Securities Commission to enable the court in this validation proceeding to pass upon the regularity or irregularity of said contract and its various terms and provisions.

VI

Admit that a purported contract, purporting to bear the [fol. 192] date of the 24th day of May, 1939, and assigned

symbol and number I.L.R.-1126, and entitled "Contract for Purchase of Property and Water Rights," is set forth as "Exhibit B" attached to the Second Amended Complaint, but in this connection these Defendants allege that any property or property rights allegedly conveyed, assigned or transferred by the Board of Directors of the Madera Irrigation District, or the Madera Irrigation District, to the United States pursuant to said purported contract marked "Exhibit B" were and are subject to the provisions of a trust as hereinafter more particularly set forth.

VII

Admit that on or about the 18th day of April, 1951, the Board of Directors of Madera Irrigation District purported to call and hold a special election as of May 9th, 1951, and that the Board of Directors of said District did cause a notice, of which "Exhibit C" attached to the Second Amended Complaint of the plaintiff is a true and correct copy, to be published in a newspaper published in the County of Madera, and in that regard these Defendants allege the fact to be that said notice was and is defective, incomplete, and that said election was improperly and illegally called and that no approval of said purported contract marked "Exhibit A" resulted from said purported special election and/or the votes cast thereby at said time or at any time, among other things and among other reasons, in that said notice did not and does not contain the information and data required to be contained in said [fol. 193] notice by the provisions of the laws of the State of California.

By Way of Further Answer and by Way of Separate Affirmative Defenses, These Defendants Allege as Follows:

VIII

That the Madera Irrigation District was organized under the California Irrigation District Act on or about the 12th day of January, 1920, and ever since has been an irrigation district duly organized and existing under the laws of the State of California. That during all of said time the owners including these answering defendants and their

predecessors in interest of the land lying within said irrigation district, as the boundaries existed from time to time, were assessed for and paid assessments to acquire for the use and benefit of said land, including the lands of these Defendants, as said area then existed, water rights and real property and other properties, and in particular the ground, land and site upon which Friant Dam is now built, together with a gravel pit and supply of gravel and materials for the construction of said dam, together with rights of way and easements and water rights and filings upon the waters that would be and are now being impounded behind Friant Dam; that the rights in and to said waters and said dam site and other aforementioned property were acquired by said Madera Irrigation District and the Board of Directors thereof as trustee for all of the land owners within the boundaries of said district as beneficiaries of [fol. 194] said trust.

IX

That in the month of May, 1939, the then Board of Directors of said District purported to make and enter into the agreement, the words, terms and figures of which are set forth as "Exhibit B" attached to the Second Amended Complaint herein. That said purported contract was not submitted to the electorate or the voters or the landowners within said District, including these answering Defendants and/or their predecessors in interest, and was made without their knowledge and/or consent. The said purported contract was not submitted to the Districts Securities Commission of the State of California, and/or approved by said Districts Securities Commission of the State of California. That said purported contract, without the knowledge or consent of the land owners within said District, including these answering Defendants and their predecessors in interest, purported to sell, transfer and convey to the United States the right, title and interests of the Madera Irrigation District as trustee and of the said landowners as beneficiaries of the said trust, heretofore set forth, in and to the property and water and water rights acquired by said District as heretofore set forth.

X

That at the time and place of the purported execution of the purported contract marked "Exhibit B" attached to the Second Amended Complaint herein, the United States, [fol. 195] its officers, agents, servants and employees, then and there well knew or then and there should have known that said property and water and water rights therein purportedly conveyed were held by the said Madera Irrigation District and the said Board of Directors thereof, in trust for all of the landowners within the boundaries of said District as beneficiaries of said trust; that any right, title or interest, if any, which the United States acquired under or by virtue of said purported contract marked "Exhibit B" in and to the said property and/or water and/or water rights is held in trust by the United States for the benefit of all of said landowners, including these answering Defendants and/or their predecessors in interest, whose lands comprised the area within the Madera Irrigation District as of the date of said purported contract or document designated as "Exhibit B."

XI

That at the time of the acquisition of the said property by the said Madera Irrigation District as more particularly described in paragraph VIII hereof, the said water rights and real property and other properties and in particular the ground, land and site upon which Friant Dam is now built, together with a gravel pit and supply of gravel and material for the construction of said dam, together with rights of way and easements and water rights and filings upon the waters that would be and now are being impounded behind Friant Dam, were necessary for District [fol. 196] purposes, that at the time of the purported execution of said purported contract marked "Exhibit B" the said property and water and water rights were then, and now are, necessary for District purposes.

XII

That subsequent to the purported execution of the purported contract marked "Exhibit B" and prior to the

purported execution of the purported contract marked "Exhibit A" the Chowchilla Water District was on the 9th day of February, 1949, duly organized under the provisions of the California Water District Act and at all times since that 9th day of February, 1949, is, and has been, a legally authorized and organized water district under the laws of the State of California; that there was contained within the boundaries of the said Chowchilla Water District, then so organized, forty-three thousand four hundred fifty four and sixty eight hundredths (43,454.68) acres within the boundaries of the Madera Irrigation District; that petitions for exclusion of the said 43,454.68 acres within the Madera Irrigation District were duly filed by the owners of said lands with the Madera Irrigation District; that subsequent thereto and by action of the Board of Directors of the Madera Irrigation District the said 43,454.68 acres were excluded from the Madera Irrigation District; that on the 24th day of August, 1949, the Madera Irrigation District executed an assignment to the Chowchilla Water District of an average annual supply of 52,000 acre feet of water to which the Madera Irrigation District was purportedly en- [fol. 197] titled pursuant to said purported contract marked "Exhibit B," which said quantity of water was the proportionate quantity of water to which the said 43,454.68 acres of land was entitled pursuant to the purported contract marked "Exhibit B"; that the said assignment was accepted and approved by the Secretary of Interior of the United States on the 16th day of September, 1949, and was consented to by the said Chowchilla Water District; that the said Madera Irrigation District did further transfer and pay to the said Chowchilla Water District the pro rata portion of the assets of the Madera Irrigation District represented by the said 43,454.68 acres of land.

That thereafter and on the 12th day of December, 1950, petitions for exclusion of 23,600 acres of land were filed with the Madera Irrigation District; that filed with said petitions for exclusion was the request on behalf of petitioners that the Board of Directors of the Madera Irrigation District express by resolution their willingness to assign to said lands their pro rata share of the water rights which belong to said lands under the provisions of

"Exhibit B," and further that the said Board of Directors of the Madera Irrigation District express by resolution their willingness to assign to a water district to be formed of these lands a due pro rata share of the assets of the Madera Irrigation District which said share is represented by the proportion of the assessments paid to the District [fol. 198] by said lands petitioned for exclusion; that said 23,600 acres of land requesting exclusion from said Madera Irrigation District constituted a separable block of land with common types and characteristics, dissimilar in nature to the remaining lands of the District; that prior to the filing of said petitions for exclusion by said owners of said lands, the Districts Securities Commission of the State of California had found in their report dated October 2nd, 1950, that it was in the public interest that if said block of lands was excluded from the Madera Irrigation District that there should be preserved to them their pro rata share of the water to which the Madera Irrigation District was entitled pursuant to the terms of "Exhibit B" attached to Plaintiff's Second Amended Complaint on file herein; that thereafter the Board of Directors of the Madera Irrigation District excluded approximately 19,500 acres of said land from the Madera Irrigation District but failed and refused to express their willingness to assign the pro rata share of water to be delivered to the Madera Irrigation District pursuant to the terms of "Exhibit B" of Plaintiff's Second Amended Complaint on file herein and refused to express their willingness to transfer to a district to be formed of said lands so excluded the pro rata share of the cash assets of the Madera Irrigation District; that at all times since the exclusion of the said lands the said Board of Directors of the said Madera Irrigation District has failed, neglected and refused to transfer the said water rights or cash [fol. 199] assets of the said Madera Irrigation District, or to express their willingness to do so.

That these answering Defendants are informed and believe and allege upon information and belief that some secret agreement has been made between the United States and the Board of Directors of the Madera Irrigation District relative to the water rights appurtenant to said nineteen thousand five hundred acres, and the consideration

otherwise applicable to said nineteen thousand five hundred acres, emanating from said "Exhibit B" hereinbefore referred to; that at the time that the said Board of Directors of the Madera Irrigation District and the said United States entered into said alleged secret agreement and/or at the time that the Board of Directors of the Madera Irrigation District and the United States purported to execute the purported agreement entitled "Exhibit A" attached to Plaintiff's Second Amended Complaint on file herein, the Madera Irrigation District and the Board of Directors thereof held the water rights appurtenant to the said nineteen thousand five hundred acres hereinbefore referred to in trust for said lands and the owners thereof; that any rights that the United States acquired or purported to acquire pursuant to said purported contract marked "Exhibit B" hereinbefore referred to, were and are as to the said nineteen thousand five hundred acres held in trust for said lands or the owners thereof; that by the provisions of "Exhibit A" attached to Plaintiff's Second Amended Com- [fol. 200] plaint on file herein the Board of Directors of the Madera Irrigation District purported to relinquish to the United States that quantity of wate. which was held in trust by said Board of Directors and by the said Madera Irrigation District for the said nineteen thousand five hundred acres of land; that such transfers and/or agreements or purported transfers and/or purported agreements, are void as to the owners of said nineteen thousand five hundred acres of lands and any rights now held or had by the Madera Irrigation District and/or the United States are held in trust for the benefit of the said nineteen thousand five hundred acres.

XIII

That said purported contract marked "Exhibit A" attached to the Second Amended Complaint is unconstitutional, void, illegal and defective, among other things, for the following reasons:

1. That prior to the purported execution of the purported contract marked "Exhibit B" and the purported contract marked "Exhibit A" the Madera Irrigation District held

as trustee for all of the landowners within the boundaries of said District, as said District was then constituted, by their filings to appropriate water from the San Joaquin River and other sources, a permanent water right; that said purported contract marked "Exhibit B" together with said purported contract marked "Exhibit A" purports to divest from the said Madera Irrigation District as [fol. 201] trustee for all of the landowners within the said District said permanent water right and to substitute in its place only a temporary and not a permanent water right; that said substitution of said temporary water right for said permanent water right constitutes a breach of trust and a deprivation of property of the said landowners without due process of law and without just compensation; that the interest of all of said landowners within the boundaries of said District, including these answering Defendants and their predecessors in interest, prior to the purported execution of said purported contract marked "Exhibit B" and said purported contract marked "Exhibit A," in said permanent water rights as beneficiaries of the said trust was a present, existing and valuable property right.

2. That said purported contract marked "Exhibit A" attached to Plaintiff's Second Amended Complaint on file herein, is so indefinite and uncertain as to be lacking in mutuality and is without sufficient settled terms and conditions as to constitute a contract in that said contract fails to indicate and specify the provisions of the Federal Reclamation Law that are to be considered as a part of said contract and fails to eliminate the Reclamation Laws of the United States and the provisions of said Federal Reclamation Laws that are not to apply to said contract and said contract fails to set forth the Reclamation Laws or other laws of the United States that are to apply to the operation of the Central Valley Project.

[fol. 202] 3. That the provisions of article 26 of said purported contract marked "Exhibit A" are illegal and void in that they constitute an unlawful delegation of power of the Board of Directors of the Madera Irrigation District.

4. That the provisions of articles 28, 29, and 30 of said purported contract marked "Exhibit A" are unlawful, unconstitutional and illegal, and are not subject to enforcement, among other reasons, in that said provisions are unworkable, impractical and impossible of performance.

5. That prior to the purported execution of said purported contract marked "Exhibit B" and said purported contract marked "Exhibit A" attached to Plaintiff's Second Amended Complaint on file herein; these answering Defendants and each of them were the owners of and were entitled to their pro rata share, for all of the lands of said answering Defendants and/or their predecessors in interest of the water and water rights owned and held by said Madera Irrigation District; that each of these answering Defendants owns lands within the boundaries of said Madera Irrigation District which are "excess lands" as said term is described in article 30 (a) of said purported contract marked "Exhibit A" attached to Plaintiff's Second Amended Complaint on file herein; that the provisions of articles 28, 29 and 30 of said purported contract marked "Exhibit A" are unlawful, unconstitutional and illegal in that they purport to deny to said answering Defendants "excess lands" said lands' pro rata share of the water [fol. 203] distributed by the said Madera Irrigation District, which said deprivation constitutes a breach of the trust heretofor (sic) alleged and the taking of property without due process of law and without just compensation.

6. That the failure to designate by the terms of said purported contract marked "Exhibit A" attached to Plaintiff's Second Amended Complaint on file herein, which of the Federal Reclamation Laws are applicable to said purported contract and which of the said Federal Reclamation Laws are not applicable to the said purported contract, and the placing by the terms of said purported contract in the said Bureau of Reclamation and Department of Interior the power to designate which of the said Federal Reclamation Laws are applicable or are not applicable, constitutes an unlawful delegation of power by the Board of Directors of the Madera Irrigation District.

XIV

That the provisions of said purported contract marked "Exhibit A" and as the same incorporates and depends upon said purported contract marked "Exhibit B," is illegal, invalid and contrary to the laws of the State of California in that said purported contract does not give or purport to give, but, in fact, purports not to give, a water right appurtenant to the lands within said District, which lands are to use said water, and does not give and purports to deny to said lands any permanent water right, [fol. 204] and limits said water right to a period of forty years, contrary to the laws of the State of California and to the Federal Reclamation Laws of the United States.

XV

That the purported terms and provisions of said purported contract marked "Exhibit A" set forth in article 4 on page 6 of said exhibit as attached to the Second Amended Complaint, which purport to recognize the right of the lands within the said District to a permanent and perpetual and appurtenant water supply, are indefinite and uncertain and do not constitute any provision relative to the making of a future contract in recognition of said rights and if said provisions are so intended, they are devoid of the necessary terms and conditions for renewal.

XVI

That said purported contract marked "Exhibit A" attached to Plaintiff's Second Amended Complaint on file herein, is illegal, unconstitutional and void, among other respects, in that the provisions of article 4 of said "Exhibit A" are invalid and contrary to the rights and interests of the Madera Irrigation District and the landowners therein, including these answering Defendants, and constitute a breach of the trust heretofore alleged and the taking of property without due process of law and without just compensation, in that they provide that said purported contract marked "Exhibit A" shall constitute full satisfaction of the District's rights under article 14 of [fol. 205] said purported contract marked "Exhibit B"

whereas said purported contract marked "Exhibit A" is for a limited term and the rights provided for and contained in said purported contract marked "Exhibit B" are perpetual and appurtenant to the land, and provide further that the use of the water supplied to the said District pursuant to the terms of said purported contract marked "Exhibit A" is limited in its application and its scope by reason of articles 28, 29 and 30 thereof, whereas said purported contract marked "Exhibit B" does not in any way limit the use or distribution of the water to be supplied to the said District pursuant to said terms of said purported contract marked "Exhibit B."

XVII

That heretofore the State of California, through the Director of Finance, and pursuant to legislative mandate, did file upon the waters that will be impounded behind Friant Dam and will be delivered to this and other districts. That said filing was made for the benefit of all of the lands contained within the Madera Irrigation District; that the Director of Finance of the State of California purported to make an assignment of said filings to the Department of Interior and the United States of America and that any such rights as the United States of America, the Department of Interior and/or the Bureau of Reclamation may have in and to said water and water rights is that of [fol. 206] a trustee for the benefit of all of the landowners within the Madera Irrigation District as beneficiaries. That said filings are subject to and inferior to the filings owned and had by these Defendants and the other landowners within said Madera Irrigation District upon said San Joaquin River and other sources of water or storage behind Friant Dam. That the landowners within said District are the real owners and beneficiaries of said filings and water rights; that the purported contract herein purports to take away such rights from said landowners, rather than recognizing or vesting said rights, and said provisions are unlawful and constitute the taking and depriving of the property of these Defendants without due process of law and/or payment of just compensation, and a breach of the trust heretofore alleged.

XVIII

That prior to the time of the purported execution of said purported contract marked "Exhibit B" attached to Plaintiff's Second Amended Complaint on file herein, and during the time of the negotiation of the terms of said purported contract, the officers, agents, servants and employees of the United States and more particularly of the Department of Interior and Bureau of Reclamation, represented to the Board of Directors of the Madera Irrigation District as it was then constituted, that the excess land limitation provisions of the Federal Reclamation Law would not be applicable to said purported contract marked "Exhibit B" or any contract executed between the United [fol. 207] States and the Madera Irrigation District in compliance or partial compliance with the terms of said purported contract marked "Exhibit B"; that said Board of Directors of the said Madera Irrigation District, as it was then constituted, relied upon said representations and believed them to be true; that said officers, agents, servants and employees of the United States intended that the said Board of Directors rely on said representations and believe them to be true; that said representations were made by said persons to induce the said Board of Directors to execute the said purported contract marked "Exhibit B" and to transfer to the United States the property, property rights, water and water rights more particularly described in said purported contract marked "Exhibit B"; that but for said representations by said persons the said Board of Directors of the said Madera Irrigation District would not have executed the said purported contract marked "Exhibit B" and would not have transferred the said valuable prope ty (sic) and property rights and water and water rights to the United States.

That prior to the execution of the purported contract marked "Exhibit A" attached to the Plaintiff's Second Amended Complaint on file herein, and during the negotiations of the terms of said purported contract, the Board of Directors of the Madera Irrigation District, as it was then constituted, demanded that in compliance with the representations theretofore made by the said officers, ser- [fol. 208] vants, agents and employees of the United States

in respect to said excess land limitation provisions, that the said United States delete from the terms of the said contract under negotiation the excess land limitation provisions and more specifically paragraphs 28, 29 and 30 of the said purported contract marked "Exhibit A"; that the United States through its contracting officers and its officers, agents, servants and employees, and in spite of the said representations theretofore made, refused to delete the said excess land limitation provisions from the said purported contract and refused to execute any contract for the supply of surface irrigation water for the lands of the Madera Irrigation District without the incorporation therein of the said excess land limitation provisions and the said paragraphs 28, 29 and 30 of said purported contract marked "Exhibit A"; that the said officers, agents, servants and employees of the United States informed the Board of Directors of the Madera Irrigation District as it was then constituted during the negotiation of the terms of the purported contract marked "Exhibit A" attached to the Plaintiff's Second Amended Complaint on file herein, that unless they executed a contract substantially in the form of the said purported contract marked "Exhibit A" and containing the said excess land limitation provisions as set forth in paragraphs 28, 29 and 30 of said purported contract marked "Exhibit A", that within six months from the date of receipt of a notice as described in article 14 (e) of the [fol. 209] said purported contract marked "Exhibit B" that the said Madera Irrigation District would not be entitled to execute a contract pursuant to the terms of said paragraph 14 of said purported contract marked "Exhibit B."

XIX

That the terms and conditions of the said purported contract marked "Exhibit A" attached to Plaintiff's Second Amended Complaint on file herein, relative to the excess land limitations as contained in paragraphs 28, 29 and 30, and the failure of said purported contract to extend to the District credit upon construction costs, and the further failure of said purported contract to specify what portion of the construction costs of the Central Valley Project are attributable to and to be paid by the said Madera

Irrigation District, and the failure of said purported contract to give to the said Madera Irrigation District or all of the lands located therein or any of the lands located therein, any permanent water right, are contrary to the terms of the purported contract marked "Exhibit B," and the imposition of said terms and conditions are without right and are in violation of the said purported contract marked "Exhibit B" if said purported contract is of any validity; that there was no additional consideration flowing from the United States to the Madera Irrigation District to support the imposition of said terms and conditions of the said purported contract marked "Exhibit B."

[fol. 210] XX

That the authorization and the reauthorization of the Central Valley Project of California as a reclamation project was and is a special act and not subject to the terms and conditions of the general reclamation laws, except as to the repayment of the costs thereof properly allocable to agriculture. That as authorized, said project was and is a special project, not subject to acreage limitations and other federal controls. That the attempt on the part of the United States to impose the use of the so-called 9e. contract under the Reclamation Act of 1939 is in direct violation of the authorization and reauthorization of said project, in that the method of repayment sought to be imposed by and through said purported contract marked "Exhibit A" is in violation of the repayment provisions of the Reclamation Law existing at the time of the authorization of the said project.

XXI

That said purported contract marked "Exhibit A" attached to Plaintiff's Second Amended Complaint on file herein, is invalid and void, among other things, in that the United States by and through the Bureau of Reclamation and/or Department of Interior, did not and have not, as required by the reclamation laws of the United States, ascertained, allocated and determined the costs of said Central Valley Project allocable to the various features thereof, including agriculture, and fixed and determined the amount

[fol. 211] to be paid by agriculture therefor, and did not and have not allocated as to the various units of said project the amount to be paid by each unit as allocable or allocated to agriculture and have not made public announcement thereof, either on an acreage basis or any other basis, and that the maximum cost allocable to agriculture for construction purposes as to the Madera Irrigation District has not been determined and/or announced, nor is any provision made in said purported contract marked "Exhibit A" in connection therewith. That no provision relative to repayment of said construction costs or credit for repayment thereon is made or provided for in said contract as required by the reclamation laws.

XXII

That the election notice "Exhibit C" attached to said Second Amended Complaint was and is defective, insufficient and void as an election notice in the following particulars, among other things:

A. Said election notice does not describe the property to be conveyed by the District to the United States, although said purported contract marked "Exhibit A" requires that, on the request of the contracting officer, the Madera Irrigation District must convey to the United States, without cost, the unencumbered fee simple title to any and all lands owned by it, or perpetual easements therein, required for right of way purposes for the distribution system; that at the time of the publication of said notice the Madera Irrigation District was and now [fol. 212] is, the owner of certain lands and easements in land connected with the water distribution system then and now in existence; that these answering Defendants are informed and believe, and upon such information and belief allege the fact to be, that at the time of publishing said notice it was and now is the plan and intention of the Board of Directors of the Madera Irrigation District and said Madera Irrigation District to convey to the United States the fee simple title to said lands and the perpetual easements owned by it in connection with the distribution system then and now in existence.

B. That said election notice does not state the maximum amount of the construction costs relative to the major works nor anything as to the maximum amount to be paid by the district upon said construction costs (apart from said distribution system).

C. That said purported contract marked "Exhibit B" in conjunction with said purported contract marked "Exhibit A" calls for the conveyance of property of the district to the United States, and in calling said election an attempt was made to vote upon and ratify said purported contract marked "Exhibit B" without any reference whatever to the description of the property or the consideration or the construction costs or the other matters required to be contained in such a notice, nor was there in such notice any reference to said contract of 1939.

[fol. 213] XXIII

That said purported contract marked "Exhibit A," when considered in connection with the provisions of the Irrigation Districts Federal Cooperation Law of California, makes said purported contract marked "Exhibit A" and its terms and provisions invalid and void, among other things, in the following particulars:

A. That said contract does not provide for, but negatives a permanent or appurtenant water right to the landowners within said irrigation district, whereas, the laws of the State of California and the United States require such water right to be permanent and appurtenant.

B. That the acreage limitation provisions contained in said purported contract marked "Exhibit A" are illegal and void in that the enforcement of the same would constitute the taking of private property without due process of law and without payment of just compensation and would result in the confiscation of private property and the prohibiting of the landowners from realizing the full and fair value thereof in any sale, notwithstanding requiring said landowners to pay the costs of said project and to pay assessments upon said real property, while depriving said landowners of the use of said project and a supply of water therefrom.

C. That the terms and provisions of said purported contract marked "Exhibit A" are contrary to the water laws of the State of California and are in direct violation of the [fol. 214] vested rights of these Defendants.

D. That said purported contract marked "Exhibit A" purports, with the provisions of said Cooperative Act, to delegate to the Congress of the United States and to the Secretary of Interior of the United States the power in the future to enact laws of Congress and to pass rules and regulations dealing with the substantive property rights of the landowners within the Madera Irrigation District without limitation and constitutes an attempt by the legislature of California to delegate to the Congress of the United States and/or to the Secretary of Interior the legislative and law making powers of the State of California.

E. That said purported contract is indefinite and uncertain, and when considered in the light of the provisions of said Irrigation Districts Federal Cooperation Law, is indefinite and uncertain and as such is lacking in mutuality and in the sufficiency of language, terms and conditions necessary to constitute a contract in that said contract is silent upon the following matters and leaves the following matters entirely to the determination of the Secretary of Interior and the agents and representatives of the Department of Interior and Bureau of Reclamation; that the attempted and purported execution of said purported contract marked "Exhibit A" in that connection is invalid as to the landowners within the Madera Irrigation District by virtue of the fact that through the application of the pro- [fol. 215] visions of the Reclamation Law and the silence of said purported contract marked "Exhibit A" on the subject and the resort to the provisions of said Irrigation Districts Federal Cooperation Law the following is accomplished:

1. The purported contract marked "Exhibit A" is silent upon the question of water rights, while it is now the known interpretation of the Secretary of Interior that said purported contract does not give, but in fact withholds from all of the landowners within the District any vested or permanent water right, all of which is contrary to the

Federal Reclamation Laws and the laws of the State of California.

2. Said contract is silent upon any credit upon construction costs (other than the distribution system), whereas the Federal Reclamation Law requires the landowners to repay the properiy repayable portion of the construction costs allocable to agriculture. That said purported contract marked "Exhibit A" is interpreted by the United States as not calling for or giving any credit on construction costs and not being a repayment contract.

3. That said purported contract marked "Exhibit A," by virtue of the lack of provisions therein and by resort to the provisions of the Irrigation Districts Federal Cooperation Law and by resort to certain federal reclamation laws, makes said contract subject to amendment, alteration and addition from time to time in the future at the will and [fol. 216] whim of the Congress of the United States and at the will and whim of the rule-making power of the Secretary of Interior, and would give to the Secretary of Interior the sole determination of any dispute and the conclusive determination of all matters relative to any controversy as to the interpretation of said contract.

XXIV

That said purported contract marked "Exhibit A" is ultra vires and beyond the power of the board of Directors of the Madera Irrigation District to execute with the terms and interpretation and conditions contended for by the District and the United States in the same respect that said purported contract marked "Exhibit A" is illegal, invalid, void and unconstitutional as hereinbefore more particularly set forth.

XXV

That said Irrigation Districts Federal Cooperation Law was and is invalid and unconstitutional, among other things, in the following particulars:

A. That said act as passed and as existing was and is special legislation, where general legislation could have

been passed, and without any intrinsic basis for the classification adopted.

B. That said act contains an unlawful delegation of the legislative powers of the State of California to the Congress of the United States.

[fol. 217] C. That said act contains an unlawful and unconstitutional adoption of the acts of Congress of the United States and of the rules and regulations of the Secretary of Interior to be made in the future and without any recognized or lawful yardstick or sphere being designated.

D. That said act is indefinite and uncertain in that it purports to authorize the application of unknown and nonexistant (sic) law and the terms and provisions of unknown and nonexistant (sic) acts of Congress and rules and regulations of the Secretary of Interior and delegates to the Board of Directors of the Madera Irrigation District and the United States the power to, by contract, legislate with respect to the levying and controlling of the assessments and the distribution of waters of the State of California, contrary to the laws of the United States and the State of California, and said act purports to, and would if utilized, authorize and accomplish the writing into said purported contract marked "Exhibit A" of an authorization to the Congress of the United States and to the Secretary of Interior to amend, alter and add to the terms and provisions of said purported contract marked "Exhibit A" after its execution, and to thereby take and deprive the landowners within the Madera Irrigation District of their property without due process of law and/or payment of just compensation.

E. That the provisions of said Irrigation Districts Federal Cooperation Law in certain particulars are invalid [fol. 218] and illegal in that they incorporate by reference and without any identification, and adopt as applicable to the Madera Irrigation District, future rules and regulations of the Secretary of Interior in violation of the prohibition against the delegation of the legislative power of the State of California and in such manner as to make said purported contract marked "Exhibit A," if validated, subject to the affect (sic) of future congressional legislation

and future rules and regulations of the Secretary of Interior in such manner as to authorize and permit a unilateral amendment of said purported contract marked "Exhibit A" in accordance with the dictates of the Congress of the United States and the Secretary of Interior.

XXVI

That the sole and entire operations of the Madera Irrigation District in relation to the lands within the boundaries of the said district will be pursuant to and in conformity with the "Contract Between the United States and the Madera Irrigation District for Water Service and Construction of a Distribution System" (plaintiff's "Exhibit A" herein).

XXVII

That these answering Defendants are informed and believe and upon such information and belief allege the fact to be that the officers, agents, servants and employees of the Department of Interior and the Bureau of Reclama-
[fol. 219] tion plan and intend by the use of the rule-making power of the Secretary of the Interior to impose upon the land, lands, and landowners within the Madera Irrigation District the following controls directly affecting the vested property rights and interests of said landowners, to wit:

A. The imposition of the "family-size farm," limiting the use of the water to acreages of between 10 and not to exceed 160 acres in any one ownership.

B. The control of the use and application of water and the conditions under which said water can be utilized.

C. The price at which non-excess as well as excess land may be sold by the owners.

That while there is no term or provision contained or set forth in said purported contract marked "Exhibit A" authorizing the imposition of the aforementioned controls by the very absence of any term or provision defining or identifying the provisions of the Federal Reclamation Law to be applicable to said purported contract marked "Exhibit A" or defining or limiting the rule-making power of the Secretary of Interior with relation to the terms, cove-

nants, and conditions set forth in said purported contract marked "Exhibit A," the said purported contract marked "Exhibit A" therein fails to protect the lands and landowners within the Madera Irrigation District from the imposition of the said controls and conditions.

[fol. 220]

XXVIII

That sections 28, 29 and 30 of the purported contract marked "Exhibit A" attached to the Plaintiff's Second Amended Complaint on file herein constitute an unlawful and unconstitutional restraint and restriction upon the right to inherit or succeed to property and/or property rights; and that said provisions of said purported contract constitute an unconstitutional and unlawful restraint upon testamentary disposition of property and property rights.

XXIX

That the portions of the purported contract marked "Exhibit A" attached to Plaintiff's Second Amended Complaint on file herein which relate to the construction of the distribution system, as is more particularly set forth in Part B thereof, is invalid, illegal and void in the following particulars, among others, to wit:

A. That said provisions are indefinite and uncertain in that it cannot be ascertained from the provisions of said purported agreement what the United States agrees to build for the sum of $8,320,000 or the type, nature and extent of the lateral system to be constructed by the United States.

B. That there is a lack of mutuality in Part B of said purported contract in that the United States does not agree therein to perform or accomplish a specified result but only agrees to expend the sum of $8,320,000 or so much [fol. 221] thereof as the United States deems expedient or necessary, toward the construction of a distribution system, and that said distribution system shall be deemed completed within the meaning of said purported contract at such time as the United States shall notify the District in writing that the total expenditures have been made.

C. That the terms, covenants, and conditions set forth in Part B of said purported contract marked "Exhibit A," wholly fail to protect the interest of and the property rights of the landowners within the boundaries of the Madera Irrigation District and in this respect the execution of said purported contract constituted an abuse of discretion on the part of the said Board of Directors of the said Madera Irrigation District and was ultra vires and void.

XXX

That subsequent to the purported execution of the purported contract marked "Exhibit A" attached to Plaintiff's Second Amended Complaint on file herein, the sole and entire operations of the Madera Irrigation District in relation to the lands within the boundaries of said District, including the lands of these answering Defendants, has been pursuant to and in conformity with the said purported contract marked "Exhibit A;" that the Board of Directors of the Madera Irrigation District have levied assessments upon all of the lands of these answering Defendants including the lands of these answering Defendants defined as "excess lands," which said assessments when collected [fol. 222] by the said Board of Directors of the said Madera Irrigation District have been paid to the United States and will be paid to the United States pursuant to the purported terms of the said purported contract marked "Exhibit A;" that these answering Defendants have paid all assessments levied upon their lands by the said Madera Irrigation District, but that in paying said assessments have not consented to nor acquiesced in the payment of the said funds derived by said assessments by the said Madera Irrigation District or the Board of Directors thereof, to the United States pursuant to the purported terms of the purported contract marked "Exhibit A;" that as to the "excess lands" of these answering Defendants as defined in said purported contract marked "Exhibit A," said assessments so levied by the said Madera Irrigation District were assessments without benefit to said lands and were therefore illegal, unconstitutional and void, and deprived these answering Defendants of property without

due process of law and without the payment of just compensation.

XXXI

That the purported execution by the Board of Directors of the Madera Irrigation District of the purported contract marked "Exhibit A" attached to Plaintiff's Second Amended Complaint on file herein, was ultra vires and of no force and effect in that it constituted an act contrary to the objects and purposes for which the Madera Irrigation [fol. 223] District was formed, which object and purpose is to benefit all of the lands within the District by obtaining and distributing such water as may be necessary for the irrigation thereof, thus enabling each landowner within the District to have for his land the benefit of a common system of irrigation.

XXXII

That no consent to the purported provisions of the purported contract marked "Exhibit A" was given by these answering Defendants or any of them.

Wherefore, these answering Defendants pray for the following judgment and decree of this court:

1. That the purported contract marked "Exhibit A" herein is void, invalid, and of no force or effect for the following reasons:

A. That it constitutes an unconstitutional deprivation of private property without due process of law and without payment of just compensation.

B. That its purported execution by the Board of Directors of the Madera Irrigation District was an ultra vires act,

C. That its purported execution was a violation by the Board of Directors of the Madera Irrigation District and the officers of the United States of the trust herein alleged to exist.

D. That the purported notice of election, "Exhibit C" herein, was defective, incomplete and improper, and that

no approval of said purported contract resulted from the [fol. 224] election thereafter conducted.

E. That it is lacking in mutuality and is without sufficient settled terms and conditions as to constitute a contract.

F. That it constitutes an unlawful delegation of the powers of the Board of Directors of the Madera Irrigation District.

G. That it constitutes an unlawful delegation of the legislative powers of the State of California.

H. That its excess land limitation provisions are unworkable, impractical and impossible of performance.

I. That it does not give a water right appurtenant to any of the lands within the Madera Irrigation District.

J. That it does not give a permanent water right to any of the lands within the Madera Irrigation District.

K. That there is a lack of consideration for the additional burdens not provided for in the purported contract marked "Exhibit B," and the deprivation of benefits provided for in the purported contract marked "Exhibit B."

L. That its terms and provisions are contrary to the water laws of the State of California and the Federal Reclamation Laws.

M. That its terms and provisions constitute an unlawful restraint upon the right to inherit or succeed to property and the right of testamentary disposition.

2. That the Irrigation Districts Federal Cooperation Law of California is invalid and unconstitutional for the [fol. 225] following reasons:

A. That it is special legislation where general legislation could have been passed.

B. That it constitutes an unlawful delegation of the legislative powers of the State of California.

C. That it constitutes an unlawful delegation of the powers of the Board of Directors of an Irrigation District.

D. That it is indefinite and uncertain.

3. An adjudication and determination of the controversy between the parties hereto with respect to the interpretation and application of the federal reclamation laws that are or are not applicable to the Central Valley Project of California, and that are or are not applicable to the purported contracts marked "Exhibit A" and "Exhibit B."

4. An adjudication that the landowners within the Madera Irrigation District have had and do now have a vested and prior appurtenant and permanent water right to the waters of the San Joaquin River and its tributaries and the waters impounded and to be impounded behind Friant Dam superior in time and right to any right or interest of the United States.

5. That any property and/or property rights that the United States obtained from the Madera Irrigation District by virtue of said purported contract marked "Exhibit B" herein, are held in trust for the use and benefit of the said Madera Irrigation District and all of the lands and landowners therein.

[fol. 226] 6. That the Madera Irrigation District and the landowners therein are entitled to have the maximum cost to the Madera Irrigation District and its landowners of the construction costs of Friant Dam and Friant-Kern Canal and the other works used and useful in delivering water to the Madera Irrigation District determined and fixed, and that payments in excess of reasonable operation and maintenance costs be required to be applied in satisfaction of the Madera Irrigation District's share of those costs properly allocable to irrigation and which are to be raised by the landowners within said district.

7. An adjudication that no acts of the Congress of the United States and/or rules or regulations of the Secretary of Interior or Bureau of Reclamation either passed or adopted subsequent to the execution and validation, if validated, of the purported contract marked "Exhibit A" herein are or shall be applicable so as to change, alter or add to the obligations or detrimentally affect the rights

of the Madera Irrigation District and/or any of the landowners therein.

8. An adjudication that the property, property rights, water and water rights purportedly sold, transferred and conveyed from the Madera Irrigation District to the United States pursuant to the purported contract marked "Exhibit B" were, at the time of said sale, transfer and conveyance, and now are, necessary for Madera Irrigation District purposes.

9. That the lands and landowners of the 19,500 acres [fol. 227] excluded from the Madera Irrigation District as herein alleged are entitled to have transferred to them, or held in trust for them, their proportionate share of the assets of the Madera Irrigation District existing at the time of their exclusion, together with their proportionate share of the water and water rights to which the Madera Irrigation District was entitled pursuant to its purchases and filings, and/or pursuant to the terms of the purported contract marked "Exhibit B."

10. That the assessments on "excess lands" levied by the Madera Irrigation District and paid by these Defendants since the purported execution of the purported contract marked "Exhibit A" were without benefit to the said lands and were therefore illegal, unconstitutional, and void, and deprived these Defendants of property without due process of law and without the payment of just compensation.

11. Such other and further relief as may be meet and equitable in the premises.

Green, Green, Plumley & Kuney, and Horton & Knox, by Kenneth A. Kuney, Attorneys for the Defendants, Warren Ocheltree and Clarice A. Ocheltree, his wife; Mansel Ocheltree and Althea A. Ocheltree, his wife; Jerold Ocheltree; Hazel O. Ocheltree; Phillip Albonico and Jane E. Albonico, his wife.

[fol. 228] EXHIBIT "I" TO ANSWER OF WARREN OCHELTREE, ET AL.

* * * * * * * *

[fol. 232] JEROLD OCHELTREE, LANDS WITHIN MADERA IRRIGATION DISTRICT

Description	*Acres More or Less*
NW¼ of Sec. 4-13-17	161.44
SW¼ of Sec. 4-13-17	160.00
NE¼ of Sec. 4-13-17	161.44
SE¼ of Sec. 4-13-17	160.00

HAZEL O. OCHELTREE, LANDS WITHIN MADERA IRRIGATION DISTRICT

Description	*Acres More or Less*
Hughes Addition to City of Madera, the NE'ly 75 feet of lots 14 to 16 in Block 65 Fairvale Addition to Madera, all that portion of Lot 6 in Block 9, commencing at a point on the East line of said Lot 6 which point is where the North line of 5th Street, as extended, intersects said East line of said Lot, thence North 150 ft., thence West 125 ft., thence South 150 feet, and thence East 125 feet to the point of beginning	
All of Sec. 6-11-17	676.64

* * * * * * * *

[fols. 378-379]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF MADERA

No. 8502

[Title omitted]

ANSWER OF DEFENDANT, THE STATE ENGINEER AND CHIEF OF THE DIVISION OF WATER RESOURCES, DEPARTMENT OF PUBLIC WORKS OF THE STATE OF CALIFORNIA TO SECOND AMENDED COMPLAINT—Filed June 26, 1952

Comes now A. D. Edmonston, as the State Engineer and Chief of the Division of Water Resources of the Department of Public Works of the State of California and appears and answers the second amended complaint of the plaintiff herein and alleges as follows:

I.

That the defendant, A. D. Edmonston, is the duly appointed, qualified and acting State Engineer and Chief of the Division of Water Resources, Department of Public Works, of the State of California.

II.

That the duties, powers, and jurisdiction vested in the Department of Public Works of the State of California in and by the Water Code of the State of California, and in particular in and by Division II thereof are administered [fol. 380] and exercised by and through the State Engineer.

III.

That this answering defendant is appearing herein pursuant to leave of court granted on the 29th day of April, 1952, to appear and take all appropriate action in this proceeding. That this answering defendant's authority and responsibilities are derived in part from and based upon Article XIV, Section 3, of the Constitution of the State of California as expressly declared and set forth in and by Section 1 of the Water Commission Act of the State of California, Statutes of 1913, Chapter 586, as amended by

Statutes of 1939, Chapter 838, the first two paragraphs whereof are now codified as Section 100 and Section 275 of the Water Code of the State of California, as amended.

IV.

That, as declared in Section 102 of the Water Code, all water within the State is the property of the people of the State but the right to the use thereof can be acquired by appropriation only upon compliance with the provisions of Division II of said Water Code of the State of California.

V.

That the Central Valley Project is a multiple-purpose project designed, planned and functioning for the general purposes of irrigation of arid lands in the Great Central Valley of California, and other purposes; that the Great Central Valley of California is the valley which lies in the [fol. 381] basin of the Sacramento and San Joaquin rivers, and their tributaries; that said project contemplates the use in said valley for irrigation, municipal, domestic, power and other beneficial purposes, of the water of the Sacramento and San Joaquin rivers and their tributaries, that said waters rise, flow and discharge into the Pacific Ocean wholly within the State of California; that there are no irrigable public lands of the United States within the service area of said Central Valley Project in said Great Central Valley; that said project was planned and generally designed by the State of California; that the plans, purposes and features of said project are substantially as set forth and described in Bulletins Nos. 25, 26 and 29 of the Division of Water Resources, Department of Public Works, of the State of California, which bulletins constitute reports submitted by said division to the California Legislature of 1931 pursuant to acts of said Legislature requiring the preparation and submission of said reports; That said bulletins and the reports contained therein are official documents of the executive department of the State of California and contain evidence material and relevant to this proceeding which the Court is required by law to judicially notice.

VI.

That said Central Valley Project was primarily designed to provide, and does and will provide a stabilizing source [fol. 382] of supplemental water supply for irrigation, and other purposes incidental thereto, on a vast acreage of lands now under irrigation, in the Great Central Valley of California, which lands without such supplemental water supply would have inadequate sources of supply; that the construction, operation, maintenance and management of said Central Valley Project will profoundly affect the economy and welfare of the people of at least 21 of the 58 counties of California, embracing several million acres of land comprising more than half of the cultivated agricultural lands of the State.

VII.

That the major engineering features of said project include:

(1) Shasta Dam and reservoir and hydroelectric power plant and Keswick Dam and power plant on the Sacramento River in Shasta County, California, with certain electric transmission lines leading from said power plants, and appurtenances thereto;

(2) Delta Cross-Channel, to conduct water of and from the Sacramento River and its tributaries across the said delta to the lower San Joaquin River, together with the Tracy Pumping Plant and the Delta-Mendota Canal, to convey water from said delta to the Mendota Pool on the San Joaquin River;

(3) Contra Costa Canal, a canal leading from the Sacramento-San Joaquin Delta to the vicinity of Martinez;

(4) Friant Dam and reservoir on the upper San Joaquin [fol. 383] River near Friant, Fresno County;

(5) Madera Canal, to conduct water stored in Friant Reservoir northerly to a point on Chowchilla River;

(6) Friant-Kern Canal, to conduct water stored in Friant Reservoir southerly to a point on Kern River near Bakersfield;

(7) Folsom Dam and reservoir and hydroelectric power plant on the American River near the City of Folsom, with certain electric transmission lines leading from said power plant, and appurtenances thereto, and related works.

VIII.

That the Secretary of the Interior of the United States, by and through its Bureau of Reclamation, was authorized to construct the Central Valley Project in and by acts of Congress designated the Rivers and Harbors Act of 1937, the Rivers and Harbors Act of 1940, and the Act of Congress approved October 14, 1949, and Act of Congress approved September 26, 1950, and to operate and maintain the same and in particular to execute repayment contracts in order to recover to the United States Treasury the reimbursable cost of the project allocated to irrigation and assigned for return by the water users in accordance with the provisions of the Federal reclamation laws, as amended.

That the United States acting through the Secretary of the Interior and its Bureau of Reclamation, has substantially completed construction of such project (with except-
[fol. 384] tion of that portion thereof set forth in subsection (7) of paragraph VII hereof), and is now operating and maintaining the usable completed works of said project, and is required so to do, pursuant to said Federal reclamation laws.

IX.

That by contract dated July 27, 1939, between the United States and the San Joaquin & Kings River Canal & Irrigation Company, Incorporated, and other corporations, commonly referred to as the "Exchange Contract", and mentioned in Article 10 (d) of the contract which is sought to be validated in plaintiff's complaint herein, and by the contract dated July 27, 1939, between the United States and Miller & Lux Incorporated and Gravelly Ford Canal Company, corporations doing business in California, and by other comparable contracts, the United States acquired certain appropriative and prescriptive rights, contract rights and estoppels against the exercise by said companies and others of riparian and prescriptive rights, claimed by

them for use for irrigation and other purposes, in and to the water of the san (sic) Joaquin River and its tributaries, and the United States in said "Exchange Contract" agreed to deliver to the contracting companies, in lieu and in exchange for their rights to the flow of the San Joaquin River, certain waters of the Sacramento River and its tributaries, to be imported to Mendota Pool through and by means of the Delta Cross-Channel, Tracy Pumping Plant and the Delta-Mendota Canal; that the United States entered into [fol. 385] all of said contracts herein referred to in order that it might be able to store in Friant Reservoir, free of the claims of any other parties, waters of the San Joaquin River rising above said reservoir and to divert the same northerly through the Madera Canal and southerly through the Friant-Kern Canal, for irrigation of lands in the counties extending from Madera to Kern, in general along the easterly side of the San Joaquin Valley floor; that it is intended and proposed by the contract herein sought to be validated that the United States shall deliver waters impounded in Friant Reservoir sometimes known as Millerton Lake and convey the same through Madera Canal for irrigation of lands in plaintiff district.

X.

That the State of California, acting through its Department of Finance and Director of Finance, pursuant to certain statutes adopted by the Legislature of California, prior to the filing of this proceeding filed certain applications with the State Engineer and Chief of the Division of Water Resources of the Department of Public Works of the State of California for the appropriation of unappropriated waters of the Sacramento and San Joaquin rivers and their tributaries, for the use and benefit of the Central Valley Project and the owners of lands to be irrigated therefrom; that by assignments, made pursuant to said statutes, the State of California, acting through its Department of [fol. 386] Finance and Director of Finance, assigned to the United States for the use and benefit of said Central Valley Project certain of said applications, to-wit: by assignment dated September 3, 1938, assigned Application No. 5625 to appropriate water of the Sacramento River at

Shasta Dam for power purposes, and Application No. 5626 to appropriate water of the Sacramento River at Shasta Dam for irrigation and domestic use, saline and flood control, and navigation purposes, and Application No. 9364 to appropriate water of the Sacramento River at points of diversion located along the Sacramento River from Shasta Dam to the Sacramento-San Joaquin Delta and on the channels of said delta, for irrigation and domestic use, saline and flood control, and navigation purposes, and Application No. 9365 to appropriate water of the Sacramento River at Shasta Dam for power purposes; and by assignment dated September 30, 1939, assigned Application No. 5637 to appropriate water of the San Joaquin River at Friant Dam for power purposes, and Application No. 5638 to appropriate water of the San Joaquin River at Friant Dam for irrigation, domestic and flood control purposes, and Application No. 9369 to appropriate water of the San Joaquin River at Temperance Flat Dam in Sections 24 and 25, T. 10 S., R. 21 E., M. D. B. & M., and at Friant Dam for irrigation, domestic use and flood control purposes; that said assignments and said applications so assigned constitute official acts of the executive branch of the State of California which this Court is required by law to [fol. 387] judicially notice.

XI.

That by virtue of the terms of said assignments the State of California has become and is the trustor of an express trust; The United States has become and is the trustee of that trust; the landowners, including the landowners of plaintiff district, have become and are the beneficiaries of that trust; that any and all claims or interests of the United States obtained by the contract, mentioned in Article 4 and Article 10 (d) of the contract herein sought to be validated, and similar or comparable contracts, and by the assignments to which reference is made in Paragraph X hereof, are held by the United States as such trustee under said express trust and as a part of the trust fund or res for the use and benefit of the plaintiff district as the representative of the landowners therein, in order to, among other things, preserve to such landowners the right to ac-

quire permanent rights to the use of water from the works of said project pursuant to the laws of the State of California and of the United States; that the United States has not and will not own or have any right of ownership or title to any water of the State acquired or to be acquired for purposes of said project other than as such trustee; that unless such status and relationships are recognized to exist and are protected by this Court in its decision herein, the effect of said contract, if it be validated, will be [fol. 388] to create uncertainty and doubt as to those matters and will thereby cast doubt upon the authority and jurisdiction of this answering defendant to discharge its responsibilities under California law.

XII.

That the Secretary of the Interior in constructing, operating, and maintaining said project is under mandate from the Congress of the United States pursuant to Section 8 of the Reclamation Act of June 17, 1902, to acquire any and all rights to the use of water required for project purposes pursuant to the laws of the State of California relating thereto, and in operating said project to proceed in all respects in accordance with the laws of the State of California relating to the control, appropriation, use or distribution of water for irrigation; that the United States has acquired, and is proceeding to acquire appropriative and other rights of various characters to the use of water for purposes of said project, all solely as such trustee, and in delivering said water is required to do so solely as a carrier and distributor of such water to the beneficiaries of such trusts.

XIII.

That an adjudication of rights to the use of water to be delivered through the works of the Central Valley Project to the plaintiff district is not properly within the scope of the issues in this proceeding.

XIV.

That it is the expressed plan and objective of the Secre- [fol. 389] tary of the Interior that the use of water through-

out said Central Valley Project shall be governed exclusively by contracts pursuant to Section 9 (e) of the Act of Congress designated the Reclamation Project Act of 1939, which contracts are and will be generally similar or comparable to that portion of the contract herein sought to be validated relating to delivery of water; that 20 or more such contracts between the United States of America and irrigation and other types of water districts organized under California law, generally comparable in character to the contract herein sought to be validated, have been or will in the near future be executed and submitted to the courts of California for validation in actions similar to the case at bar; that considerations of law and facts identical with or similar to those involved in the case at bar will be presented in said future validation actions.

XV.

That the said contract sought to be validated in this proceeding does not provide for nor recognize the right to acquire a perpetual and appurtenant right to the use of water on the part of the plaintiff district and its landowners; that said contract does not, by its terms, and will not enable the district to secure any right to the use of said water to be delivered to it by the United States and applied to beneficial use by its landowners, appurtenant to their said lands; that said contract does not provide spe- [fol. 390] cifically for any credit to the district of any construction cost component in the rates provided to be paid by the district to the United States for said water so to be delivered; that said contract is not a repayment contract providing for the return to the United States treasury of the proportion of the construction cost obligation of said Central Valley Project allocated to irrigation and assigned for return by the said district, as provided for by the Federal reclamation laws; that the said contract sought to be validated herein may nevertheless be validated in this proceeding if construed as a temporary or interim contract upon the grounds that at the present time it may not be feasible or possible for the plaintiff district and the United States to determine upon the terms of and to enter upon and execute such repayment contract because of

additions of new units to the project which are under construction but not yet completed, and also because of units of said project which are authorized for construction but upon which construction has not commenced; that, being construed as a temporary or interim contract, there will be thereby preserved to the plaintiff district and the landowners therein the opportunity, at the proper time, to enter into such repayment contract whereby the plaintiff district and its landowners as beneficiaries under the express trust as hereinabove alleged may be assured of or acquire permanent rights to the use of water from the works of said project pursuant to the laws of the State of Cali-
[fol. 391] fornia.

Wherefore, this answering defendant prays as follows:

That in the event this Court validates the contract in issue in this proceeding, the decision and judgment of this Court recite and confirm: (a) That the United States has not and does not acquire any beneficial interest or right of ownership or title in and to any waters of the State of California for purposes of said project by virtue of or pursuant to this proceeding or by virtue of or pursuant to the contract as validated by this Court; (b) the trust status of the United States in relation to the subject matter of the contract, a portion of the waters of the State of California; (c) the beneficial interests of the plaintiff district and its landowners therein as beneficiaries of such trust; (d) the status of the State of California in respect to the water to be delivered pursuant to said contract and its powers in respect thereto; (e) that neither the contract nor the validation thereof shall preclude said district and its landowners from acquiring a perpetual supply of water, appurtenant to the lands irrigated to the extent beneficial use is made thereof subject only to the payment of lawful charges for the delivery thereof, and such conditions as are or may be in accordance with the laws of this State and of the United States applicable thereto; and further, (f) that this Court is not required to, does not, and does
[fol. 392] not purport to determine, define, limit or in any manner or at all, affect the powers and duties or authority

and responsibilities of this answering defendant under the laws of the State of California; and

For such other and further relief as may be proper in the premises.

Department of Public Works of the State of California, By A. D. Edmonston, State Engineer and Chief of the Division of Water Resources.

[fol. 423] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF MADERA

No. 8502

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—
September 15, 1953

In this proceeding the Madera Irrigation District, a water users' organization formed and existing under the laws of the State of California, seeks the validation of a purported contract dated May 14, 1951, between itself and the United States of America, acting by the Secretary of the Interior and the United States Bureau of Reclamation. The proceeding, pursuant to Section 23225 of the Water Code of the State of California, is in response to the provisions of Federal law and the contract making the effectiveness of any such contract dependent upon such validation. The proceeding is *in rem* and the decree entered herein will bind, among others, the landowners of all of the land within the Madera Irrigation District, and the State of California, [fol. 424] and every agency thereof; under Section 22680 of the California Water Code, the provisions of the contract are rendered inseparable and the judgment, therefore, must declare the contract either valid or invalid. The contract deals, among other matters, with the supplying of water from the works of the Central Valley Project by the United States Bureau of Reclamation to the District

limited to a period of 40 years, and purports to impose various conditions and obligations upon the District with respect to the use and disposition of such water. In these circumstances, it is necessary to a decision as to the validity of the contract that the respective relationships of the United States, the State of California, the District and its landowners, with respect to such water be considered and determined.

This proceeding was instituted by Madera Irrigation District by the filing of its complaint or petition on the 21st day of May, 1951, and by the publication of summons thereon. In response thereto the State of California and the Water Project Authority of the State of California by and through the Attorney General answered said complaint.

Eighty-six owners of land within Madera Irrigation District and two owners of land which had once been a part of Madera Irrigation District but which had been excluded therefrom, filed a general and special demurrer to the complaint on file. Upon a regularly noticed hearing on the said demurrers, the special demurrer was sustained with leave to the District to amend the complaint. Thereafter, [fol. 425] on the 16th day of October, 1951, Madera Irrigation District filed its first amended complaint and by leave of court on the 26th day of October, 1951, filed its second amended complaint and published summons thereon. By stipulation the answer of the State of California to the complaint was deemed to be the answer to the second amended complaint.

The eighty-six landowning defendants filed general and special demurrers to the second amended complaint, which said demurrers were duly set for argument on the 9th day of November, 1951. After the argument on the demurrers, upon stipulation of counsel for all parties and upon an order of the court duly made and entered, the ruling on the demurrers was submitted and the landowning defendants hereinafter called "defendants" were ordered to answer the said second amended complaint without prejudice to their rights under the submission of the demurrers.

Regional counsel for the Bureau of Reclamation of the Department of Interior of the United States on due notice

moved to appear in the proceeding as amici curiae. The appearance in this manner was objected to by the defendants on the ground that any interested party should appear not as amicus curiae, but as a party to the proceeding and by appropriate pleading and representation, as parties to the proceeding. Leave to appear amici curiae was granted and counsel for the Department of Interior, Bureau of Reclamation, participated throughout the proceedings.

[fol. 426] Pursuant to the stipulation and order hereinabove referred to, the defendants filed answers to the second amended complaint. Thereafter, the plaintiff District moved to strike certain portions of said answer and upon stipulation it was agreed that said motion to strike be heard at the date set for the trial of the cause.

The matter being at issue, the cause was set for trial on the 29th day of April, 1952, at which time and place said plaintiff District moved to strike the answers of the defendants, which said motion was denied and the case proceeded to trial.

The matter of the State Engineer of the State of California being a necessary party to the proceeding having been considered, leave of Court was granted for the State Engineer to file a separate answer, as State Engineer, and the Chief of the Division of Water Resources, Department of Public Works of the State of California. The said answer was filed by and through separate counsel therefor.

The issues herein were thereupon joined upon the second amended complaint of Madera Irrigation District, the answer of the defendant, the People of the State of California, the answer of the defendant Water Project Authority of the State of California, the answer of the State Engineer of California and the Chief of the Division of Water Resources, Department of Public Works of the State of California, and the answers of the landowning defen-

[fol. 427] dants. Thereafter the cause proceeded to trial upon the issues so joined.

Upon the 20th day of August, 1952, the landowning defendants moved to amend their answers to the second amended complaint which said motion being duly noticed and heard, was denied. On order of the Court further evidence was introduced on the 20th day of August, 1952, and

the matter having been heard, briefed and argued and the court having arrived at its decision and made and filed its written memorandum decision and order for findings and findings having been prepared and submitted to all parties concerned and the court having considered all matters relative to the said findings of fact and conclusions of law now makes these, its finding of fact and conclusions of law and in connection therewith finds the facts to be and concludes as a matter of law, as follows:

Findings of Fact

I

The Madera Irrigation District, the plaintiff herein, is now and has been at all times since January 12th, 1920, an irrigation district duly organized and existing as such under and by virtue of the laws of the State of California. The office of the Board of Directors of Madera Irrigation District and its principal place of business is now and has been at all times herein mentioned located in the town of Madera, County of Madera, State of California. The lands within said Irrigation District are now and were at all times herein mentioned in the County of Madera, State of California.

[fol. 428]

II

The gross area contained within the boundaries of Madera Irrigation District is approximately 112,000 acres. Of this area approximately 94,000 acres is land that is suited for cultivation and irrigation. Of said gross area approximately 85,000 acres have been developed and are in a high state of cultivation and have been made such by the development by the owners of said land of a system of irrigation for said acreage. The lands are served by a system of private pumps owned by the respective landowners, together with local distribution systems for such pumped water to the respective lands. A part of the said area was served by means of ditches and a supply of water brought to said land owned by said landowners and furnished through the facilities of a private ditch company known as the Madera Canal & Irrigation Co., and commonly called the Emmert System. This system, including

its laterals, ditches, water rights and water supply, was purchased by Madera Irrigation District in 1949 and is now operated by the District. It is the plan of the District to integrate the Emmert System into its over-all distribution system. The population within said Madera Irrigation District was at the time of the execution of said contract approximately 6,000 persons. It was believed by the District that by procuring the supplemental water supply in the amounts as provided for in said contract Exhibit A attached to said complaint, that together with the underground supply and the Emmert System supply, adequate water would be available for irrigation of all irrigable lands [fol. 429] within the District.

III

Each of the answering landowning defendants is the owner of real property within the boundaries of Madera Irrigation District; with the exception of defendant McKinney. The defendants McKinney and Salaberry are the owners of land outside of the boundaries of Madera Irrigation District, which said lands were excluded from the District as hereinafter more particularly set forth. Ever since the organization of said District, the answering defendants, respectively, and their respective predecessors in interest have paid all the assessments levied upon their lands by the said District. The said District has levied assessments upon said lands since the organization of said District. The lands of defendants Salaberry and McKinney which lie outside the boundaries of said District were assessed by said District since its organization until the exclusion of said lands on the 10th day of January, 1951, and all said assessments have been paid. The respective properties of the answering defendants so owned by them and within the boundaries of said District are by the terms of the purported contract marked Exhibit "A" and before this court for validation, made liable for the obligations of the Madera Irrigation District to the United States; said lands will be assessed by said District and the answering defendants, respectively, will be required by said District to pay said [fol. 430] assessments. The individual land holdings of each of the answering defendants are described on the

assessment rolls of Madera Irrigation District and are more particularly set forth in Exhibits attached to the Answer of the answering defendants, respectively.

IV

It is not true that on the 14th day of May, 1951, the plaintiff entered into a contract in writing with the United States, a copy of which said purported contract is annexed to the Second Amended Complaint marked Exhibit "A" and before this Court for validation; the Board of Directors of Madera Irrigation District on or about the 14th day of May, 1951, signed a purported contract, a copy of which is attached as Exhibit "A" to the Second Amended Complaint and is before this Court for validation.

V

The said proposed contract was approved as a proposed contract by the Board of Directors of Plaintiff's District on the 29th day of January, 1951, and by the Secretary of the Interior on the 1st day of February, 1951; thereafter, the said proposed contract and the plan of the project, including a copy of the estimate of cost and the engineer's report was submitted to the California District Securities Commission for examination and report; it is not true that on the 26th day of March, 1951, the said Commission made its report approving said contract; the District Se- [fol. 431] curities Commission of the State of California conditionally approved the said purported contract as a method adopted by said District Securities Commission to enable this court in this validation proceeding to pass upon the regularity or irregularity of said purported contract and its various terms and provisions.

VI

The purported contract bearing the date of the 24th day of May, 1939, and assigned symbol and number Ilr-1126 and entitled "Contract for purchase of water and water rights" was executed by and between Madera Irrigation District and the United States, a true copy of which said purported contract is attached as Exhibit "B" to the Second Amended Complaint on file herein. Under the terms of said

purported contract there are property and property rights conveyed, assigned and transferred by the Board of Directors of Madera Irrigation District from Madera Irrigation District to the United States, pursuant to said contract marked Exhibit "B" and dated the 24th day of May, 1939, which were and are subject to the provisions of a trust as hereinafter more particularly set forth,

VII

During the negotiations of the terms of the contract marked Exhibit "B" and dated the 24th day of May, 1939, the officers, agents, servants and employees of the United States and more particularly the Department of Interior and Bureau of Reclamation, made no representations, statements or declarations that the excess land provisions of the [fol. 432] Federal Reclamation Law would be applicable to said contract marked Exhibit "B"; that at no time during the negotiations for said contract marked Exhibit "B", was mention made that the use of the water rights therein set forth, would be in any manner limited to 160 acres or in any manner at all; the first mention of the limitation of the use of water set forth pursuant to the terms of said agreement made by the United States or any of its officers, agents, servants and employees and more particularly those of the Department of Interior and Bureau of Reclamation, was some two years subsequent to the execution of said agreement; that it was not the manifested intention of the parties to the contract marked Exhibit "B" on the date of execution thereof, that the land limitation provisions of Federal Reclamation Laws would be applicable to the use of the water and the water rights therein set forth.

VIII

On the 18th day of April, 1951, the Board of Directors of the Madera Irrigation District purportedly called a special election to be held on the 9th day of May, 1951, for the purpose of submitting the said proposed contract marked Exhibit "A" and attached to the Second Amended Complaint to the voters of the Madera Irrigation District for their approval. The Board of Directors caused a pur-

ported notice of election, of which Exhibit "C" of the Second Amended Complaint is a true and correct copy, to be published in the Madera Daily News-Tribune, a newspaper published in the County of Madera, once a week for three [fol. 433] successive weeks before said purported election. The said notice was at the time of its publication, defective and incomplete. The said election was improperly and illegally called and no approval of said purported contract marked Exhibit "A" resulted from said purported special election and/or the votes cast thereat at said time or at any time. Like notices as set forth in said Exhibit "C" were posted in three public places in each election precinct in the District for twenty days before said purported election. The said election was not duly and regularly held as provided in said notice. The ballots in said purported election did not contain a brief statement of the general purpose of the contract, substantially stated in the notice of election. The ballots at said purported election did not contain a brief statement of the extent of the obligation to be assumed. The said ballots contained the words "Contract YES" and "Contract NO". More than two-thirds of the ballots cast at said election were marked "Contract YES". On the 13th day of May, 1951, the Board of Directors of said District met at the District Office and canvassed the returns from said purported election, and the said Board of Directors purportedly declared the result thereof. The said contract was not approved by said election. The notice as published by said Board of Directors did not contain a statement of the property to be conveyed by plaintiff District to the United States pursuant to said purported Contract. The said notice so published did not contain a state-[fol. 434] ment of the property rights which would be conveyed by plaintiff District to the United States pursuant to said purported contract. The notice as published did not contain a statement of the right to receive water pursuant to said contract dated the 13th day of May, 1939, which was purportedly relinquished and conveyed by the plaintiff District to the United States pursuant to the terms of said contract marked Exhibit "A" and before this Court for validation.

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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 122

THE IVANHOE IRRIGATION DISTRICT AND THE STATE OF CALIFORNIA, APPELLANTS,

vs.

COURTNEY McCRACKEN, ET AL.

No. 123

THE MADERA IRRIGATION DISTRICT AND THE STATE OF CALIFORNIA, APPELLANTS,

vs.

CARL F. STEINER, ET AL.

No. 124

THE MADERA IRRIGATION DISTRICT, APPELLANT,

vs.

PHILLIP AND JANE E. ALBONICO.

No. 125

THE SANTA BARBARA COUNTY WATER AGENCY, APPELLANT,

vs.

MAURICE A. BALAAM, ET AL.

APPEALS FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED MAY 13, 1957

JURISDICTION POSTPONED OCTOBER 14, 1957

Supreme Court of the United States

OCTOBER TERM, 1957

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No. 124

THE MADERA IRRIGATION DISTRICT, APPELLANT,

vs.

PHILLIP AND JANE E. ALBONICO.

No. 125

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APPEALS FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

RECORD PRESS, PRINTERS, NEW YORK, N. Y., FEBRUARY 13, 1958

INDEX

No. 122

	Original	Print
Record from the Superior Court of the State of California in and for the County of Tulare, Case No. 39627	1	1
Complaint	1	1
Exhibit A—Contract between the United States and the Ivanhoe Irrigation District	14	12
Demurrer of defendant Courtney McCracken to complaint	70	43
Petition of Bureau of Reclamation, United States Department of the Interior, to be allowed to appear as amici curiae	77	45
Notice of motion to strike petition to be allowed to appear as amici curiae	85	46
Opposition of State of California to petition of Bureau of Reclamation to be allowed to appear as amici curiae	88	48
Answer of defendants, The People of the State of California, to complaint	100	50
Answer of defendant Courtney McCracken to complaint	130	65
Amended answer of defendant, The People of the State of California, and answer of the defendant Water Project Authority of the State of California to complaint	155	77
Exhibit A—Resolution adopted by the Water Project Authority, March 27, 1951	166	86
Exhibit B—Assignment, executed September 3, 1938	169	88
Exhibit C—Assignment, executed September 30, 1939	174	92
Exhibit D—Letter from Oscar L. Chapman, Secretary of the Interior to Edmund G. Brown, Attorney General of California, dated March 5, 1951	180	96
Exhibit E—Letter from Edmund G. Brown, Attorney General of California, to Oscar L. Chapman, Secretary of the Interior, dated March 22, 1951	183	98
Exhibit F—Letter from Oscar L. Chapman, Secretary of the Interior, to Edmund G. Brown, Attorney General of California, dated March 27, 1951	185	100
Answer of defendant, The State Engineer and Chief of the Division of Water Resources, Department of Public Works of the State of California, to complaint	192	102

	Original	Print
Record from the Superior Court of the State of California in and for the County of Tulare, Case No. 39627—Continued		
Findings of fact and conclusions of law	237	111
Judgment	316	175
Proceedings in the Supreme Court of the State of California, Case No. L.A. 23043	319	177
Opinion and dissenting opinions—See Appendices to the Jurisdictional Statement, page 1		
Notice of appeal by the Ivanhoe Irrigation District and the State of California	320	177

No. 123

Record from the Superior Court of the State of California in and for the County of Madera, Case No. 8502	1	182
Second amended complaint dated, October 26, 1951 (Excerpts from)	1	182
Exhibit "A"—Contract between the United States and the Madera Irrigation District dated, May 14, 1951	6	185
Exhibit "B"—Contract between the United States and the Madera Irrigation District for purchases of property and water rights dated, May 24, 1939	55	220
Answer of defendant, the people of the State of California, and answer of defendant Water Project Authority of the State of California	79	233
Exhibit "A"—Letter from Water Project Authority of the State of California to Edmund G. Brown dated, July 23, 1951, with enclosure	92	242
Exhibit "B"—Resolution adopted by Water Project Authority March 27, 1951	93	243
Exhibit "C"—Assignment executed, September 3, 1938	96	245
Exhibit "D"—Assignment executed, September 30, 1939	102	250
Exhibit "E"—Letter from Oscar L. Chapman, Secretary of the Interior to Edmund G. Brown, Attorney General of California, dated March 5, 1951	108	254
Exhibit "F"—Letter from Edmund G. Brown, Attorney General of California, to Oscar L. Chapman, Secretary of the Interior, dated March 22, 1951	111	256

	Original	Print
Record from the Superior Court of the State of California in and for the County of Madera, Case No. 8502—Continued		
Answer of defendant, the people of the State of California, and answer of defendant Water Project Authority of the State of California—Continued		
Exhibit "G"—Letter from Oscar L. Chapman, Secretary of the Interior, to Edmund G. Brown, Attorney General of California, dated March 27, 1951	113	258
Answer of Warren Ocheltree, et al. to the second amended complaint	189	260
Exhibit "I"—Assessment rolls of the Madera Irrigation District showing description of Jerold Ocheltree and Hazel O. Ocheltree's lands within Madera Irrigation District (excerpts from)	228	287
Answer of defendant, the State Engineer and Chief of the Division of Water Resources, Department of Public Works of the State of California to second amended complaint	378	288
Findings of fact and conclusions of law	423	297
Judgment	556	380
Proceedings in the Supreme Court of the State of California, Case Sac. No. 6489	614	398
Opinion and dissenting opinions—See Appendices to the Jurisdictional Statement, page 139		
Notice of appeal by the Madera Irrigation District and the State of California	614	398
No. 124		
Record from the Superior Court of the State of California in and for the County of Madera, Case No. 8497	1	403
Petition for writ of mandate filed, May 14, 1951	1	403
Alternative writ of mandate dated, May 14, 1951	11	408
Answer to petition	18	410
Findings of fact and conclusions of law	22	411
Judgment	34	418
Minutes of June 8, 1951—Demurrer	42	420
Order for correction of minutes and transcript on appeal	46	421
Proceedings in the Supreme Court of the State of California, Case Sac. No. 6460	47	422
Opinion and dissenting opinions—See Appendices to the Jurisdictional Statement, page 180		
Notice of appeal by the Madera Irrigation District	48	422

No. 125

	Original	Print
Record from the Superior Court of the State of California in and for the County of Santa Barbara, Case No. 43906	2	426
Complaint in rem to determine validity of certain contracts etc.	2	430
Exhibit "A"—Contract between the United States and the Santa Barbara Water Agency dated, September 12, 1949	73	477
Exhibit "D"—Contract between Santa Barbara County Water Agency and the City of Santa Barbara dated, September 12, 1949	130	505
Exhibit "G"—Contract between Santa Barbara County Water Agency and Montecito County Water District dated, September 12, 1949	416	537
Answer of defendants Maurice A. Balaam, Ted R. Holden, William C. Sudden, W. G. Moore, R. E. Sudden, Charles E. Sudden and L. H. Crandall	613	568
Amendment to answer of defendants Maurice A. Balaam, Ted R. Holden, William C. Sudden, W. G. Moore, R. E. Sudden, Charles E. Sudden and L. H. Crandall filed, December 7, 1950	648	592
Amendment to answer of defendants Maurice A. Balaam, Ted R. Holden, William C. Sudden, W. G. Moore, R. E. Sudden, Charles E. Sudden and L. H. Crandall filed, January 3, 1951	662	596
Findings of fact and conclusions of law	681	603
Judgment	706	620
Reporters transcript of testimony, November 14, 1951	777	626
Offers in evidence	803	644
Proceedings in the Supreme Court of the State of California, Case No. L.A. 22761	816	650
Opinion and dissenting opinions—see Appendices to the Jurisdictional Statement, page 205		
Notice of appeal by The Santa Barbara County Water Agency	817	650
Order postponing jurisdiction	827	656

IX

The election notice attached to the Second Amended Complaint on file herein as Exhibit "C", was and is defective, insufficient and void as an election notice in the following particulars, among other things:

A. Said notice does not contain a statement of the property to be conveyed by the District to the United States; that at the time of the publication of said notice, Madera Irrigation District was and now is the owner of certain lands and easements in land connected with the water distribution system then and now in existence, known as the Emmert System; that at the time of publishing the said notice, it was and now is the plan and intention of the Board of Directors of Madera Irrigation District and said Madera Irrigation District, to convey to the United States a fee simple title to said lands and the perpetual easements owned by it in connection with the said Emmert System; that by its terms the purported contract marked Exhibit "A" and before this court for validation, requires [fol. 435] that upon request of the contracting officer, Madera Irrigation District must convey to the United States, without cost, the unemcumbered (sic) fee simple title to all lands owned by it, or perpetual easements therein, required for right of way purposes for the distribution system; that the Emmert System is a portion of the distribution system to be constructed, repaired and enlarged by the United States pursuant to the plan of the distribution system agreed upon by the District and the United States; that the fee title to lands underlying the ditches of the Emmert system or the rights of way or easements owned in connection therewith, were not stated in said election notice as property to be transferred to the United States pursuant to the purported contract marked Exhibit "A" and before this court for validation.

B. Said election notice does not state the maximum amount of the construction costs relative to the major works of the Central Valley Project, nor does said notice state the maximum amount to be paid by the District upon said construction costs, (apart from said local distribution system as described in part B of said contract.)

C. That the terms of said contract marked Exhibit "A" and before this court for validation, required the forfeiture to or the transfer to the United States of property and property rights owned by Madera Irrigation District and all of the landowners therein, pursuant to the terms of Ex-
[fol. 436] hibit "B" attached to the Second Amended Complaint; that among these property rights so transferred, conveyed or relinquished to the United States, which were held by said Madera Irrigation District for all of the landowners therein, pursuant to the terms of said contract marked Exhibit "B" and dated the 24th day of May, 1939, are the following:

1. A right to receive a supplemental water supply for all irrigable lands within the boundaries of said District, without regard to acreage limitation or excess land limitations.

2. A permanent, appurtenant water right for all lands lying within the boundaries of Madera Irrigation District as said District was constituted on the 24th day of May, 1939, and as said District was constituted upon the date of execution of the purported contract now before this court for validation.

D. Said election notice is ambiguous, indefinite and uncertain, in that it cannot be ascertained therefrom whether the United States will construct a distribution system to each unit of 160 acres of irrigable land within the District for the sum of $8,320,000.00 or whether the United States will expend the sum of $8,320,000.00 for the construction of a partial distribution system.

X

Said election was not conducted fairly; said election was [fol. 437] not conducted in all respects according to law; that it is not true that the result of said election was the approval of said contract by the voters of the District. The Board of Directors of Madera Irrigation District caused to be published in the Madera Daily News Tribune false and misleading statements concerning the provisions of the contract in respect to the completion of a distribution

system to each 160 acres of land by the United States for the sum of $8,320,000.00 or less; said statements influenced the voters of said District at said election, and the true results of said election cannot be ascertained by reason of said false and misleading statements.

There was represented to said voters by means of said newspaper advertisement and said purported notice of election that the design and construction of said distribution system would provide a system for the delivery of water to each unit of not more than 160 acres of irrigable land within the District at a cost to the District of not to exceed $8,320,000.00. Said amount to be repaid by the District in 40 equal payments without interest. The United States now claims that the United States is under no obligation under said contract herein sought to be validated to construct a complete distribution system to each unit of 160 acres of irrigable land within the District boundaries for said sum of $8,320,000.00. There has been represented to the Board of Directors of said District that said distribution system would cost in excess of $12,000,000.00 and that the total cost thereof over and above said $12,000,000.00 [fol. 438] is unknown.

XI

Thereafter and pursuant to the provisions of Section 1 of the Act of May 15, 1922 (Ch. 190, 42 Stat. 541, 43 USCA 511,) and of Section 46 of the Act of May 25, 1926 (44 Stat. 649, 650 43 USCA 423 e,) and pursuant to the requirements of Article 36 of said contract, Exhibit A attached to said complaint, and pursuant to the provisions of Section 23225 of the Water Code of California and to the extent adopted therein, the provisions of Sections 22670-22684 of the Water Code of California, this proceeding was authorized and instituted by Madera Irrigation District to obtain a judicial examination, approval and confirmation of (1) all the proceedings had and taken for the organization of Madera Irrigation District as an irrigation district; (2) for such a determination of all the proceedings leading up to and including the claimed execution and delivery of said proposed contract, Exhibit A; (3) the validity of said contract, Exhibit A, and the legality and binding effect of each and

every term and provision thereof, upon, against and in favor of the parties thereto; and (4) the right and authority of the respective persons signing the same and the parties thereto to execute said proposed contract. The prayer also requested such other and further orders and decrees as to the Court shall seem just, wise or necessary in the proceeding.

XII

[fol. 439] That for many years prior to 1948 the State of California has been making studies, developing plans and proceeding with an over-all plan for the conservation, storage and distribution of water from its intrastate streams and sources of water supply to the end of having and furnishing of a supplemental supply of water where needed to developed areas and the furnishing of a supply of water where needed and as available to undeveloped areas. That as a part of this over-all plan by the State of California, there came into being a project which has become known and designated as the "Central Valley Project of California". That the Central Valley Project was, pursuant to act of the Legislature of the State of California enacted August 5, 1933, and duly approved upon referendum by the electors of said State on December 19, 1933, duly authorized as a coordinated plan for the development of the Sacramento and San Joaquin Rivers through a system of physical works, for the primary purpose of conserving, transporting, and by means of exchange of waters, making a supplemental supply of water available to agricultural lands within the said Central Valley Project possessing an insufficient supply of water; that for that purpose and deemed an indispensable part of said authorized project, works were planned and constructed, including the construction of Shasta Dam on the Sacramento River to store and conserve the waters thereof, and to make available by means of an exchange of waters, surplus waters from the Sacramento River to the large area of agricultural land in the San Joaquin Valley having an insufficient water [fol. 440] supply, and to substitute, in part, such surplus waters from the Sacramento River for waters of the San Joaquin River impounded and diverted at Friant Dam on

the San Joaquin River for use in the San Joaquin Valley; that the Central Valley Project is within the Great Central Valley of California, lying between the Sierra Nevada and the Coast Range and extending north and south a distance of approximately 450 miles; that said Great Central Valley consists of the Sacramento Valley in the north and the San Joaquin Valley in the south, the major rivers being the Sacramento and the San Joaquin Rivers, respectively; that the Sacramento River runs in a southerly direction from its source in the Siskiyou and the Sierra Nevada Mountains in Northern California above the Shasta Dam, and the San Joaquin River runs in a northerly direction from its source in the Sierra Nevada Mountains above Friant Dam and east of Fresno in the southerly portion of the San Joaquin Valley, both rivers converging in the common delta of said rivers in the upper reaches of the San Francisco Bay; that of the acreage in the two valleys above three-fifths lies in the San Joaquin Valley, while about two-thirds of the water production of the area comes from the Sacramento River; that as part of said authorized project, works were planned to impound and divert at Friant Dam the waters of the San Joaquin River northerly in the Madera Canal and southerly in the Friant-Kern Canal for the irrigation of lands generally, along the easterly side of the San [fol. 441] Joaquin Valley, including service from the Madera Canal to the lands of the plaintiff District, the waters so diverted to be replaced in major part by the transportation of excess and unneeded waters of the Sacramento River; that all waters utilized and to be utilized under said project plan rise and flow wholly within the State of California, and that for many years prior to the adoption of the project plan by the State there was, and now is, an extensive agricultural development within said San Joaquin Valley, including plaintiff District, and most lands within said Valley were, and now are, under production and under irrigation from privately acquired or developed sources of water supply; that much of the irrigation was and is by pumping from underground water supplies, and that the available surface and underground water supplies were and are gradually being seriously reduced and were and are in need of replenishment.

That as a part of this general program, the facts concerning which are hereinafter more specifically found upon, the Director of Finance of the State of California filed applications to appropriate the unappropriated waters within the State of California. That among these applications were applications to appropriate water as and for a supplemental water supply for the area and lands now included within the boundaries of Madera Irrigation District.

XIII

That commencing in 1850 the State of California made [fol. 442] studies throughout the State of California, including in particular in the Sacramento and San Joaquin Valleys, for the conservation of its water resources; the said studies continued throughout the years and there was developed by the State of California a State Water Plan. As a part of this Plan for the conservation of its water resources, the State of California made studies of all available dam sites for the storage and ultimate distribution for agricultural as well as other purposes, of its water resources. As a part of and in keeping with such endeavors and in order to have all waters that had not been appropriated and put to use available for such plans, the State of California in 1927 and following, authorized and caused the Director of Finance of the State of California to on behalf of the State of California and in furtherance of such development, file with the State Engineer, Division of Water Resources, Department of Public Works of the State of California (hereinafter in these Findings referred to as "State Engineer") applications to appropriate and put to use all of the unappropriated waters within the State of California, and pursuant thereto the Director of Finance of the State of California did file such Applications on all of the major sources of water supply within the State. That included within the studies and the steps taken by the State of California were detailed studies and engineering reports with particular relation to the Sacramento and San Joaquin Valleys of California of a project that came to be known and is known as the "Central Valley Project of California". [fol. 443] That the Central Valley Project of California, as

planned by the State of California, includes the construction of dams, hydro-electric development, the storage of water, and the construction of canals for the distribution of water to areas within the Sacramento and San Joaquin Valleys of California, including the service of water from Friant Dam through the Madera Canal to the identical lands included within the boundaries of Madera Irrigation District. That to carry out the studies and plans of the State of California, in 1933, through a legislative action there was brought into being an agency of the State of California known and designated as "The Water Project Authority of the State of California". That said agency was given and still has, not only the right and power to, but the duty to, construct, operate and maintain the project, including the making of contracts with water users and the collection of rates, charges and revenues therefor, and to repay the costs of the project. That said Water Project Authority was authorized to issue and sell $170,000,000.00 in bonds to finance the construction and operation of said Central Valley Project. That in 1934, because of the then existing depression, said Water Project Authority of California, deeming it not advisable to sell said bonds at said time, made application to the Federal Emergency Administration of Public Works for a loan and grant to the Water Project Authority of the State of California, said loan and grant to be utilized to construct and operate said Central [fol. 444] Valley Project and to be repaid through revenues realized by said Water Project Authority of California from said Central Valley Project of California. That while this application was pending and in 1935, as a part of the relief program to create employment and aid in construction of public works, there was allocated by presidential order $20,000,000.00 for use in connection with the Central Valley Project of California. In March of 1936 a contract was entered into by and between the Water Project Authority of California and the Federal Government under the Emergency Relief Appropriation Act of 1935 of the United States, which contract provided, among other things, "in order for the accomplishment of the early construction and operation of the project in the most expeditious and economical manner, the Bureau of Reclamation and the Water

Project Authority shall cooperate fully with each other in attaining such end", and "it is contemplated that at the earliest practicable date a contract will be entered into between the United States and the Water Project Authority providing for—

"(a) The operation and maintenance by the Authority of useful units of the project, upon presenting assurances of payment satisfactory to the United States of the costs thereof;

"(b) Appropriate payment by the Authority to the United States for expenditures in construction of the project;

"(c) The securing by the Authority of the appropriate [fol. 445] contracts for disposal of facilities to be made available by the project."

On March 13, 1937, and on November 8, 1937, supplemental contracts to said contract of March, 1936, were entered into by and between the Water Project Authority and the Federal Government containing (a), (b), and (c) above quoted, but the introductory recital in said supplemental contracts read: "It is contemplated that at the earliest practicable date, and *as soon as permitted by law*, a contract will be entered into between the United States and the Water Project Authority . . .". That the provisions relative to (a), (b), and (c) above quoted in said contract of March, 1936, and in contracts supplemental thereto have never been revoked.

XIV

Thereafter the Water Project Authority of the State of California and the agents and representatives of the State of California attempted to procure from the United States of America a contract or contracts whereby the State of California by and through the Water Project Authority of California could and would proceed with the making of contracts with irrigation districts and other agencies for the delivery of water from the Central Valley Project of California to the areas to be served and to enable the Water Project Authority of California to operate and maintain

the useful units of said project and to repay to the United States the repayable costs of said project. That any con- [fol. 446] tract or contracts in connection therewith and to that end were and have been refused and the United States, through the Department of Interior and the Bureau of Reclamation, has insisted that all contracts for the delivery of water or other service from the Central Valley Project, as it has been from time to time completed and/or is being constructed, should be made exclusively with irrigation districts and local agencies by and through the Bureau of Reclamation and Department of the Interior of the United States and upon such terms and conditions as should be prescribed by the Bureau of Reclamation.

That although now and for several years past, the United States, acting by the Bureau of Reclamation, has maintained that numerous provisions of the Federal Reclamation Laws, including the so-called 160-acre limitation, must, as a matter of Federal Law, be applied to the Central Valley Project, the United States did not disclose or make known to the State of California or its representatives any intention so to apply such provisions, or any claim that such provisions were applicable thereto, until in or about the year 1941.

XV

The Central Valley Project is a multiple-purpose project, designed and planned by the State of California and functioning for the general purprose (sic) of irrigating arid lands in the great Centàl (sic) Valley of California, and other purposes. The great Central Valley of California is the Valley which lies in the basin of the Sacramento and San Joaquin Rivers and their tributaries. The project [fol. 447] contemplates the use in said Valley for irrigation, municipal, domestic, power and other beneficial purposes of the water of the Sacramento and San Joaquin Rivers and their tributaries. Said waters rise, flow and discharge into the Pacific Ocean wholly within the State of California. There are no irrigable public lands of the United States within the service area of the said Central Valley Project in said great Central Valley. Said project was planned and generally designed by the State of Cal-

ifornia that the plans, purposes and features of said project are substantially as set forth and described in bulletins 25, 26 and 29 of the Division of Water Resources, Department of Public Works of the State of California, which bulletins constitute reports submitted by said Division to the California Legislature of 1931 pursuant to acts of said Legislature requiring the preparation and submission of said reports; said bulletins and reports contained therein are official documents of the Executive Department of the State of California.

XVI

That the Central Valley Project was primarily designed to provide and does and will provide a stabilizing source of supplemental water supply for irrigation and other purposes incidental thereto on a vast acreage of lands now under irrigation in the great Central Valley of California, some of which said lands without such supplemental water supply, including the lands within the boundaries of the [fol. 448] plaintiff Madera Irrigation District would have inadequate sources of supply. That the construction, operation and maintenance and management of said Central Valley Project will profoundly effect (sic) the economy and welfare of the people of at least twenty-one of the fifty-eight counties of California, embracing several million acres of land comprising more than one-half of the cultivated agricultural lands of the State. That the major engineering features of said project include:

(1) Shasta Dam and Reservoir and Hydroelectric power plant and Keswick Dam and power plant on the Sacramento River in Shasta County, California, with certain electric transmission lines leading from said power plants, and appurtenances thereto;

(2) Delta-Cross-Channel, to conduct water of and from the Sacramento River and its tributaries across the said delta to the lower San Joaquin River, together with the Tracy Pumping Plant and the Delta-Mendota Canal, to convey water from said delta to the Mendota Pool on the San Joaquin River;

(3) Contra Costa Canal, a canal leading from the Sacramento-San Joaquin delta to the vicinity of Martinez;

(4) Friant Dam and Reservoir on the upper San Joaquin River near Friant, Fresno County;

(5) Madera Canal, to conduct water stored in Friant Reservoir northerly to a point on Chowchilla River;

(6) Friant-Kern Canal, to conduct water stored in Friant Reservoir southerly to a point on Kern River near Bakers-[fol. 449] field;

(7) Folsom Dam and Reservoir and hydroelectric power plant on the American River near the City of Folsom, with certain electric transmission lines leading from said power plant and appurtenances thereto, and related works;

(8) Sly Park Development.

XVII

That among the applications made by the State of California, acting through its Department of Finance and Director of Finance, pursuant to certain statutes adopted by the Legislature of California, were the following applications duly filed in the office of the State Engineer to appropriate water from the Sacramento River and the San Joaquin River, to wit: application 5629, records of the State Engineer, Division of Water Resources, to appropriate water of the Sacramento River at Shasta Dam, filed July 30, 1927, to appropriate a diversion of 11,000 second feet constituting 3,190,000 acre feet per annum of storage for power purposes; application 5626, records of the State Engineer, Division of Water Resources, filed July 30, 1927, to appropriate the waters of the Sacramento River at Shasta Dam to divert 8,000 second feet constituting 3,190,000 acre feet per annum for irrigation, domestic use, saline, flood control and navigation purposes; application 9364, records of the State Engineer, Division of Water Resources, filed August 2, 1938, to appropriate the waters of the Sacramento River from Shasta Dam to divert 9,000 [fol. 450] second feet constituting 3,000,000 acre feet per annum for irrigation purposes; application 9365, records

of the State Engineer, Division of Water Resources, filed August 2, 1938, to appropriate waters of the Sacramento River at Shasta Dam to divert 7,000 second feet constituting 3,310,000 acre feet per annum for power purposes; application 5637 records of said Division filed July 30, 1927, to appropriate the waters of the San Joaquin River at Friant Dam to divert 5,000 second feet constituting 1,210,000 acre feet per annum for irrigation, domestic, and flood control purposes; application No. 9369 records of said Division to appropriate the waters of the San Joaquin River at Friant Dam to divert 2,000,000 acre feet per annum for irrigation, domestic use and flood control.

That the waters involved in these applications are necessary to enable the furnishing of a water supply from Friant Dam through the Madera Canal to the lands within the Madera Irrigation District, including the lands of the answering landowner defendants. That the United States sought unconditional assignments from the Department of Finance of the State of California to the United States of the aforesaid applications, which unconditional assignments were refused and conditional assignments were made providing that the waters involved within the assigned applications were to be used in furtherance of and as a part of the Central Valley Project of California and for the delivery to the lands to be benefited by said applications. That included within the designations contained in [fol. 451] said applications and the maps and data filed in connection with the aforesaid applications was a description of the property to be served and benefited by said applications and that said description and descriptions included the identical land now contained within the Madera Irrigation district and including the lands of the answering landowner defendants. That the water to be delivered from Friant Dam and through the Madera Canal under the provisions of said contract Exhibit A attached to said complaint is a part of the water involved in said applications to appropriate water, which applications were made, as aforesaid, by said Director of Finance and were conditionally assigned to the United States in trust for the use and benefit of the Central Valley Project and which water was designed and intended to be appropriated for delivery to

the lands now comprising the area within the boundaries of Madera Irrigation District, as well as other lands within other irrigation districts and similar water agencies within the area to be served by said project. That said applications are still pending and are in good standing and that proceedings are pending before the Division of Water Resources, Department of Public Works of the State of California, as to permits to be issued in connection therewith. That there is now being delivered by the United States to the Madera Irrigation District Water from Friant Dam and through the Madera Canal for use on the lands within the district, which said water is included in said applications and assignments. This water is now being beneficially [fol. 452] used by the plaintiff District and the landowners therein.

That the application made to the State Engineer to appropriate unappropriated water created in the applicant in trust for the persons for whose benefit the application was made and in such beneficiaries, a property right which right the Court expressly finds to be, as applied to all parties and persons for whose benefit said applications were filed, including the landowners in the plaintiff District, a vested interest in real property.

That the United States has acquired in trust vested appropriative rights to the use of the waters of the San Joaquin River which are not subject to the jurisdiction of the State Engineer; but by far the greater portion of the water required for project purposes is subject to permits therefor to be issued by the State Engineer; that the United States now holds such applications, the more important having been acquired by assignment in trust from the State Department of Finance as herein found, for water sufficient for the project purposes; that permits by the State of California for the use of said water have not as yet been issued; that these findings and conclusions are not intended to, nor shall they, in anywise interfere with, restrict, or limit the lawful discretion of the State Engineer in acting upon such applications, or in the issuance of permits and licenses pursuant thereto, or in conditioning the same in the public interest, but that it is intended that he should [fol. 453] proceed to exercise the discretionary power

vested in him without undue delay or injury to the water users within the District.

Prior to the assignments to the United States by the State of California of the applications for appropriation hereinbefore set forth, the owners of all the lands situated in the areas described in said applications possessed an incomplete, incipient and conditional right in the water applied for, subject to the discretionary power of the State Engineer as herein recited in acting on said applications, which right was a vested interest in real property, and said rights were not extinguished by the aforesaid assignment to the United States. At the time of the filing of said applications and the vesting of said rights, no limitations were placed by the State of California upon the use of said water on lands owned by an individual in excess of 160 acres. The United States as assignee of said applications received the same subject to the rights of the landowners of the lands described in said application, including all of the landowners herein, and the United States as such assignee acquired no greater rights than those held by its assignor, the State of California. The United States as assignee of said applications received the same in trust for the uses and purposes of the Central Vally (sic) Project as said uses and purposes are set forth in the laws of the State of California. As such assignee, the United States became the trustee for the benefit of the landowners de- [fol. 454] scribed in said applications, including all of the landowner defendants herein, and as such trustee, was charged with the duty to utilize said waters upon the lands of said beneficiaries without regard to limitation as to acreage as is set forth in Paragraphs 28, 29 and 30 of the contract before the Court for validation.

XVIII

That by contract dated the 27th of July, 1939, by and between the United States and the South San Joaquin and Kings River Canal and Irrigation Company, Inc., and other corporations commonly referred to as the "Exchange Contract", and by contract dated July 27, 1939, between the United States and Miller & Lux, Incorporated, and Gravelly Ford Canal, corporations doing business in California, and

by other comparable contracts, reference to which is made in paragraph (d) of Article 16 of the contract herein sought to be validated, the United States acquired certain appropriative and prescriptive rights, contract rights and estoppels against the exercise by the companies with whom said contracts were made, in and to the waters of the San Joaquin River and its tributaries and the United States by said "Exchange Contract" agreed to deliver to said contracting companies in lieu of and in exchange for their rights to certain waters of the San Joaquin River other and different waters from the Sacramento River and its tributaries, which other and different waters were to be imported to the Mendota Pool by means of the Delta Cross-Channel, [fol. 455] Tracy Pumping Plant and the Delta-Mendota Pool Canal. That the United States entered into all of said contracts herein referred to in order that waters of the San Joaquin River and its tributaries above Friant Dam could be stored in Friant Reservoir and diverted northerly through the Madera Canal and southerly through the Friant-Kern Canal for the irrigation of lands in the counties extending from Madera on the north to Kern on the south, and which lands are located generally on the easterly side of the San Joaquin Valley floor, including, among other areas, the lands within the plaintiff District (as well as other lands within other irrigation and similar districts within the service area in said easterly portion of said Valley). That it was and is intended and proposed by the contract herein sought to be validated that the United States shall deliver waters impounded in Friant Reservoir, sometimes known as Millerton Lake, and convey the same through the Madera Canal for the irrigation of the lands in the plaintiff District, and in particular to the lands of the answering landowner defendants. That in the making of said contracts by the United States with said contracting companies and in the acquiring of such exchange rights and estoppels, the United States did not do so in connection with the serving of any property or lands of the United States. That said contracts were so made, designed and intended solely as a means of arranging an exchange of waters from the Sacramento River to serve lands theretofore served by waters of the San Joaquin River and to

[fol. 456] enable the taking of waters from the San Joaquin River and in particular from Friant Dam to the lands for which said San Joaquin River waters had been appropriated, including the lands within plaintiff District. That the United States, in making said contracts and in acquiring such rights, did so wholly and solely in connection with said Central Valley Project of California and that any and all costs in connection therewith are and were charged by the United States to said Project as a part of said Project costs and that all such costs are and will be treated as a part of such Project costs to be returned to the United States as in the manner of the return to the United States of its other returnable costs in connection with said Project. That any and all such rights and interests of the United States are held by the United States solely as trustee for the use and benefit of said Central Valley Project, including the plaintiff District and the lands of the answering landowner defendants, and that the use of such rights and waters involved therein can be made only in connection with the operation of said Central Valley Project.

XIX

Since the organization of the Madera Irrigation District in 1920, the owners of land, including these answering defendants and their predecessors in interest, lying within said irrigation District as the boundaries existed from time to time, were assessed for and paid assessments to acquire [fol. 457] for the use and benefit of said lands, including the lands of the answering defendants, water rights, real property and other properties and in particular, the land, ground and site upon which Friant Dam is now built, together with a gravel pit and supply of gravel and material for the construction of said Dam, together with rights of way and easements and water rights and filings upon waters, that would be and now are, being impounded behind Friant Dam, and as more particularly set forth and described in said contract dated the 24th day of May, 1939. The rights in and to said waters in said Dam site and other aforementioned property were acquired by Madera Irrigation District and the Board of Directors thereof, as Trustee

for all of the landowners within the boundaries of said District as beneficiaries of said trust; included among said beneficiaries, were these answering defendants and their predecessors in interest.

XX

On the 24th day of May, 1939, the Board of Directors of Madera Irrigation District made and entered into an agreement, the words, terms and figures of which are set forth as Exhibit "B" attached to the Second Amended Complaint herein; said contract was not submitted to the electorate for the vote of the landowners within said District, including these answering defendants and/or their predecessors in interest and was made without their knowledge or consent; said contract was not submitted to the District Securities Commission of the State of California and/or ap-
[fol. 458] proved by said District Securities Commission; the said contract was made without the knowledge or consent of the landowners within said District, including these answering defendants and/or their predecessors in interest, and purported to sell, transfer and convey to the United States, the right, title and interest of Madera Irrigation District as Trustee of the said landowners who were beneficiaries of said Trust as hereinafter and heretofore set forth, in and to the property and water rights acquired by said District as therein and as hereinafter and heretofore set forth.

XXI

At the time and place of the execution of said contract marked Exhibit "B", attached to the Second Amended Complaint herein and dated the 24th day of May, 1939, the United States, its officers, agents, servants and employees, then and there well knew that said property and water and water rights therein purportedly conveyed, were held by Madera Irrigation District and the Board of Directors thereof in trust for all of the landowners within the boundaries of said District, as beneficiaries of said trust; any right, title or interest which the United States acquired under and by virtue of said contract marked Exhibit "B" in and to said properties and/or water and/or water rights,

was and is held in trust by the United States for the benefit of all of the landowners, including these answering defendants and/or their predecessors in interest, of the lands comprising the area within Madera Irrigation District as [fol. 459] of the date of the said contract or document designated as Exhibit "B" and bearing the date of the 24th day of May, 1939.

XXII

At the time of the acquisition of said property by Madera Irrigation District, as more particularly described in said contract bearing date of the 24th day of May, 1939, the said water rights, real property and other properties and in particular the ground, land and site upon which Friant Dam is now built, together with a gravel pit and supply of gravel and material for the construction of said Dam, together with the rights of way and easements and water rights and filings upon waters that would be and now are being impounded behind Friant Dam, were necessary for District purposes; at the time of execution of said contract, the said property and water and water rights were then, and each of them now are, necessary for District purposes.

XXIII

Subsequent to the execution of the contract marked Exhibit "B" and hearing (sic) the date of the 24th day of May, 1939, and prior to purported execution of the contract before this Court for validation, the Chowchilla Water District was on the 9th day of February, 1949, duly organized under the provisions of the California Water District Act and at all times since the 9th day of February, 1949, is and has been a legally authorized and organized Water District under the laws of the State of California; there was con- [fol. 460] tained in the boundaries of said Chowchilla Water District when so organized, 43,454.68 acres within the boundaries of Madera Irrigation District; petitions for exclusion of the said 43,454.68 acres within Madera Irrigation District were duly filed by the owners of said land with Madera Irrigation District; subsequent thereto and by action of the Board of Directors of Madera Irrigation District, the said 43,454.68 acres were excluded from Madera

Irrigation District; on the 24th day of August, 1949, Madera Irrigation District executed an assignment to Chowchilla Water District, of an average annual supply of 53,000 acre feet of water, to which Madera Irrigation District was entitled pursuant to said contract marked Exhibit "B" and dated the 24th day of May, 1939, which said quantity of water was the proportionate quantity of water to which the said 43,454.68 acres of land was entitled pursuant to said contract marked Exhibit "B"; said assignment was accepted and approved by the Secretary of Interior of the United States on the 16th day of September, 1949, and was consented to by Chowchilla Water District; Madera Irrigation District did further transfer and pay to Chowchilla Water District, a pro rata portion of the assets of Madera Irrigation District represented by the said 43,454.68 acres of land.

Thereafter and on the 12th day of December, 1950, petitions for exclusion of 23,600 acres of land were filed with Madera Irrigation District; filed with said petitions for [fol. 461] exclusion was a request on behalf of petitioners that the Board of Directors of Madera Irrigation District express by resolution their willingness to assign to said lands their pro rata share of the water rights which belong to said lands under the provisions of said contract dated the 24th day of May, 1939; and further, that said Board of Directors of said Madera Irrigation District express by resolution their willingness to assign to a water district to be formed of these lands, the due pro rata share of the assets of Madera Irrigation District, which said share is represented by the proportion of the assessments paid to the District by said lands petitioned for exclusion; said 23,600 acres of land requesting exclusion from Madera Irrigation District constituted a separable block of land of common types and characteristics dissimilar in nature to many lands of the District; prior to the filing of said petition for exclusion by the owners of said lands, the District Securities Commission of the State of California had found, in their report dated October 2, 1950, that it was in the public interest that if said block of lands was excluded from Madera Irrigation District, there should be preserved to them their pro rata share of water to which

Madera Irrigation District was entitled pursuant to the terms of said contract dated the 24th day of May, 1939; thereafter the Board of Directors of Madera Irrigation District excluded approximately 19,500 acres of said 23,600 acres of land from Madera Irrigation District, but failed and refused to express their willingness to assign and [fol. 462] failed to assign or transfer a pro rata share of water to be delivered to Madera Irrigation District pursuant to the terms of said contract dated the 24th day of May, 1939, and refused to express their willingness to transfer to the district to be formed of said lands so excluded, a pro rata share of the cash assets of Madera Irrigation District; at all times since the exclusion of said lands, the Board of Directors of Madera Irrigation District failed, neglected and refused to transfer the said water rights or cash assets of Madera Irrigation District or to express their willingness to do so;

That Madera Irrigation District had the right to receive water pursuant to said contract dated the 24th day of May, 1939, as Trustees for the use and benefit of the said 19,500 acres of land so excluded from said District; said 19,500 acres of land and the owners thereof, including the defendants, Salfaberry and McKinney herein, were the beneficiaries of said trust; pursuant to the terms of the contract before this court for validation, the Board of Directors of Madera Irrigation District attempted to transfer the said right to receive water pursuant to the said contract dated the 24th day of May, 1939, to the United States; the purported transfer constituted a breach of trust on behalf of Madera Irrigation District and the Directors thereof as to the said 19,500 acres of land so excluded from said District and the owners thereof and if validated, would constitute the taking of property without due process of law [fol. 463] and without just compensation; the quantity of water purportedly transferred by said contract before this court for validation to the United States, and the right to the use and benefit thereof, was held by Madera Irrigation District and the Board of Directors thereof, and/or the United States by and through the Department of Interior, U. S. Bureau of Reclamation, in trust for the said 19,500 acres of land and the owners thereof, including defendants

Sallaberry and McKinney herein; any rights that the United States acquired pursuant to the contract dated the 24th day of May, 1939, were and are as to the said 19,500 acres of land, held in trust for said lands or the owners thereof.

XXIV

That it is true that prior to the execution of the contract marked Exhibit "B" and dated the 24th day of May, 1939, and the purported contract marked Exhibit "A" and before this court for validation, Madera Irrigation District acquired as Trustee for all of the landowners within the boundaries of said District, as said District was then constituted by reason of its applications to appropriate water of the San Joaquin River and other sources, an incipient right in the water applied for and which right the Court expressly finds to be, as applied to all parties and persons for whose benefit said Applications were filed, including the landowners in the plaintiff District, a vested interest in real property; said purported contract marked Exhibit "A" and before this court for validation purports to divest from said Madera Irrigation District [fol. 464] and the said Madera Irrigation District as Trustees for all of the landowners within said District, certain permanent water rights and to substitute in its place a temporary water right; if said purported contract marked Exhibit "A" and before this court for validation were validated, that said substitution of said temporary water right for said permanent right, would constitute a deprivation of property of the landowners within Madera Irrigation District, without due process and without just compensation being paid therefor, or any compensation being paid therefor; the right to the use of said water is unrestricted as to acreage or other ownership conditions; said contract purports to limit the right to use said water by the terms and conditions set forth in paragraphs 28, 29 and 30 thereof; that the imposition of said conditions constitutes a breach of said trust and a deprivation of property without due process of law and without payment of just compensation therefor; the interest of all of said landowners within the boundaries of said District, includ-

ing the answering landowner defendants herein and their predecessors in interest, as beneficiaries of the trust heretobefore set forth; in and to said permanent water rights, was and is a present, existing and vested property right.

XXV

That all applications to appropriate unappropriated waters of the Sacramento and San Joaquin Rivers and their tributaries, or any thereof, duly filed with the State [fol. 465] Engineer, Division of Water Resources, Department of Public Works of the State of California, and which continue in good standing on the records of said Division, which were made, acquired and are now held by the United States of America, Bureau of Reclamation, with the objective of acquiring rights to the use of such water to be delivered through the works of the Central Valley Project for irrigation, whether such applications were made by said United States or acquired from others, including the State of California, Department of Finance, are held by the United States as trustee for the beneficiaries of said project; that said applications to appropriate the unappropriated waters of the Sacramento River were made and acquired by the United States in part to enable the delivery of water through project works in accordance with the obligation of the United States pursuant to said Exchange Contract as recited in these findings, and in order to enable the United States, in operating said project, to utilize water of the San Joaquin River equivalent in quality and quantity to that imported from the delta of the Sacramento and San Joaquin Rivers, and derived in part from the Sacramento River; that the plaintiff Madera Irrigation District and all of its landowners and all of the answering landowner defendants, including the owners of the 19,500 acres of land excluded from Madera Irrigation District, are beneficiaries of said trust as herein found, including the right to require the United States to exercise due diligence in completing said [fol. 466] applications and in particular, subject to the proper exercise of discretion of said State Engineer in acting on said applications to secure the issuance by said State Engineer to the United States of permits pursuant to said

applications; that by reason of said applications so made, held or acquired as recited in these findings, the plaintiff Madera Irrigation District, for and on behalf of all its landowners now has a vested right in the water applied for, subject to the discretionary power of said State Engineer as herein recited in acting on said applications, and which said right the court finds to be a vested interest in real property; and in the event of issuance of said permits by the said State Engineer and upon application of said water to beneficial use by plaintiff Madera Irrigation District and its landowners and the owners of the said 19,500 acres excluded from the District, in accordance with said permits, said District and all of its landowners and the owners of said 19,500 acres will acquire a permanent and perpetual appropriative right appurtenant to all lands within said District and to the lands so excluded, to continue to receive and so use water delivered by the United States, with priority of date of said applications, subject only to conditions lawfully imposed as authorized or required by the laws of the State of California.

XXVI

The Secretary of the Interior in constructing, operating, [fol. 467] and maintaining said project is under mandate from the Congress of the United States pursuant to Section 8 of the Reclamation Act of June 17, 1902, to acquire any and all rights to the use of water required for project purposes pursuant to the laws of the State of California relating thereto, and in operating said project to proceed in all respects in accordance with the laws of the State of California relating to the control, appropriation, use or distribution of water for irrigation; that the United States has acquired, and is proceeding to acquire appropriative and other rights of various characters to the use of water for purposes of said project, all solely as such trustee, and in delivering said water is required to do so solely as a carrier and distributor of such water to the beneficiaries of such trust.

XXVII

That by virtue of the facts and circumstances herein found, recited and existing, including said assignments of said applications, the State of California has become and is the trustor of an express trust; the United States has become and is the trustee of that trust; the landowners, including the landowners of the plaintiff District and the landowners in said 19,500 acres excluded from said District, have become and are beneficiaries of that trust; that any and all claims or interests of the United States obtained by the contracts referred to in paragraph XVIII of these Findings, including those referred to in the provisions of [fol. 468] Article 16 (d) of the contract sought to be validated herein, and including similar and comparable contracts and by and through the assignments to which reference has herein been made as to said applications to appropriate water, are held by the United States as such trustee and as a part of the trust fund or res for the use and benefit of the owners of said land so excluded and the plaintiff District as the representative of the landowners therein, in order to, among other things, preserve to such landowners the right to acquire permanent rights to the use of water from the works of said project pursuant to the laws of the State of California and of the United States; that the United States does not have and will not own or have any right of ownership or title to any water of the State acquired or to be acquired for the purposes of said Project, other than as such trustee; that such trust status and relationship is hereby found to exist, and the effect of said contract, if it were validated, would be to create uncertainty and doubt as to those matters and thereby cast doubt upon the authority and jurisdiction of the authorities of the State of California to discharge their responsibilities under California law, and would deprive the State of California and the Water Project Authority of the State of California and the Division of Water Resources of the State of California of their rights, duties and responsibilities in the administration of the laws of the State of California and would deprive the plaintiff district and the landowners therein and the owners of the land so [fol. 469] excluded, of property without due process and

without compensation and would deprive all parties concerned of the right to be heard before the courts in the protection of their rights and interests.

XXVIII

That the studies of the State of California relative to the conservation and use of the water resources of the State of California, as more particularly hereinbefore outlined and the adoption of a State Water Plan by the State of California and in particular the preparation of the plans, design and planned construction of the works to be and constitute the Central Valley Project of California and the creation of the Water Project Authority as an entity and agency of the State of California for the purpose of planning, constructing, operating, maintaining and repaying the costs of said Central Valley Project of California and the construction of all works in connection therewith including units added to the original planned Central Valley Project of California have been and were designed and planned as a permanent project, that the construction of the dams and canals for the storage and delivery of storage water within said Central Valley Project to the various areas to be benefited, including in particular the lands within the plaintiff District and including the plans for the construction of a distribution system within said plaintiff District, each and all were planned and designed, constructed, and are being operated not as temporary works, but as permanent and perpetual works for the [fol. 470] continued delivery of water to the lands within the plaintiff District (as well as other irrigation districts and like agencies within said Central Valley Project).

XXIX

That the United States acting by and through the Department of Interior maintains and asserts that the Central Valley Project of California, as herein referred to, was authorized for construction by and through the Bureau of Reclamation in and by acts of Congress as follows: The Rivers and Harbors Act of 1937, the Rivers and Harbors Act of 1940, the Act of Congress approved October

14, 1949, and an Act of Congress approved September 26, 1950. That the United States, acting through the Secretary of the Interior and Bureau of Reclamation, has substantially completed the construction of said Project (with the exception of that portion thereof set forth in Subsection 7 and 8 of paragraph XVI hereof) and is now operating and maintaining the usuable, (sic) completed works of said Project.

XXX

That the United States claims to be the sole and exclusive agency, through the Department of Interior and Bureau of Reclamation, for the selling of water to Madera Irrigation District from Friant Dam; that the only contract or contracts for water delivery which have been offered by the United States or which the United States is willing to make with Madera Irrigation District for use of water from said Central Valley Project has been and is the contract marked Exhibit "A" attached to the com- [fol. 471] plaint; that said contract is offered by the Bureau of Reclamation of the Department of Interior on behalf of the United States as one which the officials of the Department of Interior and the Bureau of Reclamation of the United States claim and contend is authorized and provided for by Section 9(e) of the Reclamation Project Act of 1939 of the United States; Act of August 4, 1939, Chapter 418, 53 Stats; 1184, 43 U.S.C. 485. In that connection, it is claimed by the officers, agents and representatives of said Bureau of Reclamation, Department of Interior of the United States and the Secretary of Interior of the United States, as follows:

(1) That under the authority of said Section 9(e) of said Reclamation Project Act of 1939, said contract, Exhibit "A" attached to plaintiff's complaint, is a utility-type contract by which the United States may and proposes in perpetuity to control and distribute said waters from Friant Dam through the Madera Canal to the lands of Madera Irrigation District, and that said contract is in no sense a repayment contract and is in no sense a contract under which Madera Irrigation District and/or the landowners within Madera Irrigation District are entitled to any credit

upon the repayable construction costs of Friant Dam or the Friant-Kern Canal or any of the works used or useful in the delivery of water to Madera Irrigation District.

(2) That said Contract, Exhibit "A" attached to the plaintiff's complaint, does not and can not give or recognize [fol. 472] any right in Madera Irrigation District and/or the landowners within Madera Irrigation District to any continued delivery of water beyond the term of 40 years as provided in said contract and that any right to water under said contract is not appurtenant to any of the lands within Madera Irrigation District and is not a permanent right to the use of said water, and that the United States is entitled upon the termination of said contract to require negotiation of a new contract for continued delivery of water from said project upon such terms and conditions as the United States may then determine.

(3) That the United States is entitled to and may attach as a condition to the use of water within the boundaries of Madera Irrigation District, that water may not be served by Madera Irrigation District for industrial or domestic purposes and that the United States may in connection with the delivery of project water prescribe the amount of acreage which may be owned by any one person and that the United States may require all landowners within Madera Irrigation District to select from lands held, had, owned and used by them, limited acreages, and that if the landowner does not select the acreage he will retain, that it will require the Board of Directors of Madera Irrigation District to make the selection for the landowner and that if the Board of Directors does not make the selection, that the Secretary of Interior will make the selection for and on behalf of the landowner and that unless the landowner [fol. 473] agrees and consents to the sale of the excess land over and above the limited acreage at a price in which the landowner has no voice, that the landowner may not receive any water for that excess acreage and that he may not receive water for any of his land unless he has made the selection of the so-called "non-excess" land that he will retain. That in the Madera Irrigation District, the Bureau of Reclamation has notified the landowners of

the Bureau's present requirement to make such selection and to execute contracts with the United States for the sale at the direction of the United States and at the price fixed by the United States of the so-called "excess land" and has notified the landowners that they may not receive water for any of their lands except by compliance with these directions.

(4) That the Reclamation Project Act of 1939 authorized and empowers the Secretary of Interior to apply such of the terms and provisions of the reclamation laws of the United States as are unrepealed, commencing with the Reclamation Act of 1902, as said Secretary from time to time may determine relative in particular to those matters hereinafter referred to and recited.

XXXI.

That the Court finds that it is not true that the Reclamation Project Act of 1939 and/or Section 9 (e) thereof, as passed and adopted the Congress of the United States, was intended to or understood to change the Federal Recla- [fol. 474] mation laws with respect to the matter, of requiring the use by the Secretary of Interior and Bureau of Reclamation of 40-year repayment contracts that would provide for the return to the United States within a period of 40 years, without interest, of that portion of the capital construction costs of said Central Valley Project allocated by said Secretary of the Interior to irrigation and assigned by him for return to the Federal Treasury by the water users, including the landowners of plaintiff Madera Irrigation District. The Court finds that the theory of the utility-type contract withholding and denying a permanent and appurtenant water right, requiring renegotiation and not providing a credit for construction costs to water users' organizations and to plaintiff Madera Irrigation District and its landowners, on the Central Valley Project, was not made known or presented to the said committees or the said Congress and cannot be said as a factual matter to have been intended by Congress in the passage of said Reclamation Project Act of 1939, or any part thereof and that in fact, it was understood and intended that the pas-

sage of the Reclamation Project Act of 1939 and all parts thereof did not and would not in anywise conflict with or change the basic reclamation laws of the United States requiring and providing for repayment contracts returning to the United States the reimbursable cost of construction of the Central Valley Project allocated or allocable to irrigation and repayable by the water users within a period of 40 years, plus a development period of not to exceed [fol. 475] ten years.

XXXII

That the construction, operation and maintenance of works within the Central Valley Project of California by the United States, including the construction of distribution systems for the use of water by local districts, was authorized in 1937 by special Act of Congress, as amended; that at the time of passage of said Act and at all times subsequent thereto, there have been and now are no irrigable public lands of the United States subject to reclamation by use of irrigation water from said project; that the United States is not the owner of any lands within the service area of said project upon which water can or will be applied to beneficial use; that said special Acts, as amended, did not and do not include any provisions or in anywise provide for the application to said project, or any part thereof, of any acreage limitation, as such term "acreage limitation" is used in these findings.

That the provisions of said special Act, as amended relative to reimbursement to the United States of the reimbursable cost of said project relate only to the reimbursement of the United States in the manner provided by the Federal Reclamation Laws and were not intended to conflict with the State law or to deprive landowners within said project of property or property rights.

XXXIII

The Court finds that with respect to the so-called acreage [fol. 476] limitations contained in Articles 28, 29 and 30 of said proposed contract, said provisions and each and all of the same relative to the restriction upon delivery of

water to the so-called excess lands and in relation thereto, are impossible of application, use and enforcement and the use and application and enforcement of said provisions is unworkable, impracticable, arbitrary and amounts to the taking of property without due process and without compensation.

XXXIV

That the Secretary of Interior in constructing, operating [fol. 477] and/or maintaining said project, is under mandate from the Congress of the United States pursuant to Section 8 of the Reclamation Act of June 17, 1902, in the acquiring of any right to the use of water to acquire the same pursuant to the laws of the State of California relating thereto, and in operating said Project, to proceed in all respects in accordance with the laws of the State of California relating to the control, appropriation, use or distribution of water for irrigation, and that when waters from the Project are delivered by the United States to a district, other than pursuant to a contract whereby said district seeks delivery of surplus project water to meet its temporary requirements, and such water is applied and beneficially used in the irrigation of district lands, the district and the landowners therein acquire a right in the water which is a vested interest in real property appurtenant to the lands irrigated in accordance with the laws of the State of California, limited only by continued beneficial use and such reasonable conditions as may be lawfully imposed by the State Engineer; and the Court finds that plaintiff district and the landowners therein are entitled to receive, and have received, delivery of project water from the United States, not as temporary surplus project water but as a continuous supply of project water, and that plaintiff District and the landowners therein have acquired a vested right in the water, and to the continued delivery of water from the Project for beneficial use on all district lands, as an appurtenance [fol. 478] to the lands irrigated, limited only by those conditions reasonably to be imposed in accordance with State law through the Office of the State Engineer.

XXXV

That the State of California is one of the United States of America and appears in this proceeding in its sovereign, governmental and proprietary capacity as such State, in its own interests and for the protection of its own rights; also as parens patriae, in the interests of and for the protection of all of its citizens, residents, landowners and water users and its agency, the plaintiff district and to protect the integrity and proper application of its Constitution and Laws respecting water and the use thereof, water rights, contracts, property and property rights; also as trustor of an express trust herein described, which trust relates to the use of water in the Central Valley Project herein mentioned; also as absolute owner of the corpus of the water to be used in and by the Central Valley Project and as owner of the right of reversion of any rights to the use of such water as may be forfeited or otherwise terminated for non-use or otherwise; and as trustee for the use and benefit of the beneficiaries of the Central Valley Project of the right to apply to beneficial use for irrigation in said Central Valley Project the appropriated waters of the Sacramento and San Joaquin Rivers and streams tributary thereto, which waters as co-mingled will be used for the purposes of said Project, including so-called "ex-[fol. 479] change waters" covered by the contracts heretofore made by the United States with the specified owners for the exchange of Sacramento River waters for waters of the San Joaquin River.

XXXVI

That the Water Project Authority of the State of California is a body politic and corporate, organized and existing under the laws of the State of California with the right, power and authority, among other things, to sue and be sued and appears herein pursuant to leave of Court.

This is a proceeding in rem, binding upon all parties and persons having, or claiming to have any interest in the subject matter of this proceeding.

XXXVII

That the defendant, A. D. Edmonston, is the duly qualified and acting State Engineer and Chief of the Division of Water Resources, Department of Public Works of the State of California; that the Division of Water Resources is a legally constituted division of the Department of Public Works of the State of California and that the State Engineer of California is the Chief of the Division of Water Resources.

That the Division of Water Resources aforesaid is the Agency of the State of California to which application to appropriate waters of the Sacramento and San Joaquin Rivers, as hereinbefore recited, was made and before which are pending the applications for permits relative to the [fol. 480] use of said waters in the plaintiff District and other similar districts within the Central Valley Project of California.

XXXVIII

That the United States is one of the parties defendant described in the caption of plaintiff's complaint herein in paragraph II of said complaint and that the Government of the United States by congressional action has required the filing and prosecution of this proceeding.

XXXIX

The validity or invalidity of the contract marked Exhibit A attached to the plaintiff's complaint depends measurably upon whether the United States has the right to the water to be delivered by it pursuant to contract, or rights to the use thereof, or title or ownership therein; and in determining the validity or invalidity of said contract there must be found and adjudicated as to all of the interested parties to this proceeding, including all parties appearing herein, their respective rights, powers, status, relationships and duties regarding the use and control of waters within the State of California involved within the Central Valley Project and in particular those involved in the contract which is the subject of this action; that such a determination and definition of the rights, powers, status, relation-

ships and duties, of the parties hereto and the parties interested in the subject matter of the action is necessary to determine the incidence and effect of the purported contract thereon; that the correspondence between the [fol. 481] Attorney General of the State of California and the Secretary of Interior, copies whereof are attached to the amended answer of the Attorney General in this proceeding does not create, and is immaterial to, any issue concerning the validity of the contract involved herein.

XL

That it is the express plan and objective of the Secretary of Interior that the use of water throughout the Central Valley Project, including the use of water in the plaintiff District, shall be governed exclusively by contracts claimed to be authorized pursuant to the provisions of Section 9 (e) of the Act of Congress designated the Reclamation Project Act of 1939, which contracts the Secretary will require to be generally similar and comparable with that portion of the contract herein sought to be validated relating to the delivery of water. That twenty or more such contracts between the United States of America and irrigation districts and other types of water districts organized under California law generally comparable in character to the contract herein sought to be validated, have been or will in the near future be executed and submitted to the courts of California for validation in actions similar to the case at bar. That considerations of law and facts identical with or similar to those involved in the case at bar will be presented in said future validation actions.

[fol. 482] XLI

That said contract is factually ambiguous, indefinite, uncertain and lacking in mutuality, among other things, in that it fails to define, set forth or accomplish an agreement between the parties and would, if validated, preclude a future determination, except the exclusive and final determination of the Secretary of the Interior, of the rights, powers and privileges of the plaintiff District and the landowners therein, relative to such matters as water

rights, ultimate and final credit for payments made by the District and the landowners within the District under the contract, the manner and methods of assessment of lands within the District and the determination and redetermination from time to time by the Secretary of the Interior as to what terms and provisions of the Reclamations laws of the United States and what laws of the State of California are to be applied to and govern said contract and said plaintiff District and the landowners therein.

XLII

The purported contract marked Exhibit "A" and before this court for validation is indefinite and uncertain and is without sufficient separate terms and conditions as to constitute a contract, in that said contract fails to indicate and specify the provisions of the Federal Reclamation Law that are to be considered as a part of said contract and fails to eliminate the Reclamation Laws of the United States and the provisions of said Reclamation Laws that do [fol. 483] not apply to said contract and said contract fails to set forth the Reclamation Laws or other laws of the United States that are to apply to the operation of the Central Valley Project.

XLIII

That the contract herein sought to be validated does not set forth or define the relative rights and duties of the parties thereto and of the beneficiaries of said contract and the parties directly interested in and to be bound by said contract, and if validated without definition or conditions, said contract would be interpreted and enforced as meaning and being entirely different from what said contract purports on its face to be. That it has been made an issue of fact herein, and the Court finds, that there are expressed plans, objectives, claims and interpretations of the Secretary of Interior as to said contract which the Secretary of Interior and the officers, agents and representatives of the Department of Interior and Bureau of Reclamation of the United States would and will claim to be a part of and inherent in said contract and which

would and will be applied and enforced by said Secretary, Department and Bureau if said contract be validated, and this upon the claim that validation gives binding and final judicial sanction to these expressed plans, objectives, claims and interpretations of the Secretary of Interior.

In this regard the Court finds that under the said alleged contract sought to be validated, the United States, through its Secretary of Interior, the Department of Interior and [fol. 484] the Bureau of Reclamation thereof, will assert, enforce and put into effect the following:

(1) That with respect to the use of water in the Central Valley Project and in particular the use of water from the Central Valley Project in plaintiff District, no water therefrom may be used and no right to the use of water therefrom may be had or obtained, except from the United States, and then only upon such terms and conditions as shall be prescribed by the Secretary of Interior.

(2) That under the contract in question, as well as to other similar contracts with other irrigation districts within the Central Valley Project, the plaintiff, and such other irrigation districts and/or the landowners therein, do not have and cannot obtain and, in fact, will be denied with respect to the use of project water or water carried through project works, any permanent or appurtenant water right.

(3) That the use of water from the Central Valley Project, and in particular the water to be delivered to plaintiff District and other districts within the Central Valley Project, shall be governed exclusively by contracts made between the United States and plaintiff and other districts and that said contract herein sought to be validated and other similar contracts do not and will not give, and in fact do and will negative and deny any permanent or appurtenant water right and that there is no right of renewal of said contract upon its termination and that any renewal thereof, if granted, shall be upon such terms [fol. 485] and conditions as prescribed by the Secretary of Interior.

(4) That part (A) of the contract in question relating to water delivery and other similar contracts with other

irrigation districts within the Central Valley Project, are authorized and provided for under Section 9 (e) of that Act of Congress known as the Reclamation Project Act of 1939, and as so authorized and written are not repayment contracts, but are so-called utility-type contracts which withhold and deny any permanent and appurtenant water rights and which authorize the United States to operate said project in perpetuity as a utility server of water.

(5) That said contract herein sought to be validated and other similar contracts, (exclusive of that portion of said contract designated part (B) and relating to construction of a distribution system,) are not repayment contracts and do not provide for any credit to the District or landowners therein upon the repayable construction costs of said project allocated by said Secretary to Irrigation and assigned by him for return by the water users, and that the United States may continue in perpetuity to impose and collect rates and charges, thereby allowing revenue to the United States in perpetuity (over and above and in addition to operation, maintenance and overhead,) after the United States has recovered its full costs of the project allocated or allocable to irrigation and assigned for return by the water users and otherwise. That by the [fol. 486] terms and provisions of said contract Exhibit "A" attached to plaintiff's complaint, the plaintiff District and/or its landowners are not entitled to any accounting of the costs of the project or to any repayment credits.

(6) That there is no right of renewal of said contract at the end of 40 years, or other termination of said contract.

(7) That the Secretary of Interior is authorized and entitled to limit and define the acreage in any one ownership that may receive water from plaintiff District and to withhold and compel the District to withhold water from owners' lands within the District if land is in excess of the indicated single ownership acreage to be held by any single owner. That the Secretary of Interior is entitled by rule and regulation, as the sole and final determiner of controversies arising under the contract, to determine and provide for the application of rules, regulations and laws

relating to residence, occupancy, acreage limitations and forfeiture of land titles to the United States for refusal to abide by alleged acreage controls, and to deny at the discretion of the Secretary of Interior releases of lands and areas being served from restraints and restrictions claimed to exist under reclamation law, such as relinquishment of claimed acreage limitations when allocable or allocated to irrigation and to be repaid by water users applicable to agriculture have been repaid in part or in whole.

(8) That there has been delegated to the Secretary of Interior of the United States by the Legislature of the [fol. 487] State of California, the right, power and privilege to from time to time, by rule and regulation of the Secretary of Interior and/or by further contract and/or agreement with the Board of Directors of the plaintiff District and other similarly affected irrigation districts in California, to in effect legislate with respect to the rights of the plaintiff and such other similar districts and/or the landowners thereof, as to the use of water to be delivered to the plaintiff and said other districts from the Central Valley Project, with particular reference to the manner of levying assessments upon the lands within the plaintiff District and other similar Districts; the manner and method of apportioning and delivery of water to the landowners within the plaintiff and other similar districts and that there has been delegated to the Congress of the United States by the Legislature of California, the right, power and privilege of, by Congressional Legislation, from time to time in the future changing, altering and amending the rights of the plaintiff District and the landowners therein and of the parties appearing and interested in this proceeding, upon the basis that said delegated right, power and privilege is by said contract and contracts authorized and provided for and are a part of the rights, powers and privileges of the Secretary of Interior and the Congress of the United States under said contract without regard to the constitutional and statutory provisions governing delegation of such powers.

(9) That by virtue of the terms and provisions of said [fol. 488] proposed contract Exhibit "A", and in partic-

ular the provisions thereof relative to so-called surplus, seepage, or waste waters, the plaintiff District and its Board of Directors will be deprived of the right, power and privilege of distributing, delivering and disposing of the water which it has acquired under the terms of said contract as said District would be entitled to do under California law, and that as to such surplus, seepage and/or waste water, that title thereto is by said contract vested in the United States so that the United States may control underground waters within said project.

XLIV

The portion of the contract herein sought be validated which relates to the delivery of water as distinguished from the construction of the local distribution system, does not contain any statement of the amount of the share of the construction costs of the Central Valley Project or of the works of the Central Valley Project used or useful in serving water to the plaintiff District and which are or will be required to be repaid to the United States by the plaintiff District and that said contract does not contain any provisions or terms for crediting to the plaintiff District and/or the landowners therein of any of such costs as may be repaid by the plaintiff District and/or the landowners therein when paying $3.50 per acre foot for Class 1 water and/or $1.50 per acre foot for Class 2 water. That said contract with respect to the furnishing of water does [fol. 489] not contain any provisions relative to consideration of that part of the costs of the Central Valley Project in relation to construction of works connected with water supply and which such costs have been allocated to irrigation. That said contract in that respect is indefinite and uncertain and ambiguous and purports to leave the matter of that part of the construction costs of works connected with water supply and allocated to irrigation to the discretion of the Secretary of Interior and to likewise leave to the discretion of the Secretary of Interior the application or non-application of credits in favor of the plaintiff District and/or the landowners as to that part of the construction costs of works connected with water supply and allocated to irrigation.

That as a matter of fact the Secretary of Interior did make and report to the President and the Congress of the United States a determination with respect to the Central Valley Project of California as follows: The estimated cost of the proposed construction of the Central Valley Project of California (independent of the cost of construction of local distribution systems) was fixed at $384,314,000.00 made up of the following items: Irrigation, including Contra Costa distribution system and canal capacity for future water, $221,551,600.00; power $104,143,600.00; municipal water and industrial water $9,091,800.00; navigation $18,083,000.00; flood control $31,444,000.00, total allocations $384,314,000.00. That the features of the Central Valley Project included within said costs were and are [fol. 490] as follows: Shasta Dam and Reservoir, Shasta Power Plant, Keswick Dam and Reservoir, Keswick Power Plant, Delta Cross-channel, Contra Costa Canal System, Delta-Mendota Canal, Friant Dam and Reservoir, Madera Canal, Friant-Kern Canal, Delta Stream Electric Plant, Transmission System, Water Rights and miscellaneous, Contra Costa Distribution System. That at said time the Secretary of Interior determined and estimated the costs of the major works of said Central Valley Project, which could and can be properly allocated to irrigation and probably be repaid by the water users, and determined that of the amount aforesaid allocated to irrigation, the farmers should repay and it would be within their ability to repay a sum not exceeding $3.50 per acre foot for Class 1 water and a sum not exceeding $1.50 per acre foot for Class 2 water and that the total burden to be borne by the farmer for irrigation water delivered canal-side or river-bank-side including expenses of operation, maintenance and replacement, should not exceed $58,545,475.00 (including $3,074,600.00 for Contra Costa Distribution System). That the balance of the costs of the Central Valley Project were allocated as follows: The balance of the costs allocated to irrigation were allocated to be repaid from power revenues, i.e., at said time 27 percent of the cost allocated to irrigation was to be repaid by the farmer and 73 percent of the costs allocated to irrigation was to be repaid from power revenues and by municipal and industrial

[fol. 491] water users. The amounts allocated to power were to be repaid by power and the amounts allocated to municipal and industrial water users were to be repaid by such users and the amounts allocated to flood control and navigation were to be borne by the federal government as non-reimbursable items.

That the Secretary of Interior and the Congress of the United States did accept said allocations and determinations and said amounts have been fixed as the maximum amounts to be paid by the irrigation water users within said project for reimbursement to the United States of its properly reimbursable costs allocated to irrigation and to be repaid by the water users. That the plaintiff District and the landowners within the plaintiff District and the landowners of the 19,500 acres excluded from said District, are entitled to have water delivered from said Central Valley Project to said plaintiff District and to said landowners within the framework of said allocated costs and at a charge not to exceed $3.50 per acre foot for Class 1 water and $1.50 per acre foot for Class 2 water, which payments, after being credited to reasonable and necessary operating, maintenance, and replacement costs are required to be applied to the plaintiff District's and landowner's portion of the necessary and reasonable construction costs of the works of the Central Valley Project used or useful in delivering water to the plaintiff District and landowners and when said reasonable and necessary construction costs have been so paid, the plaintiff District and [fol. 492] said landowners are entitled to be free of further construction cost charges and plaintiff District and said landowners are entitled to an accounting upon the reasonable and necessary construction, operation, maintenance and replacement costs and for the credits to which plaintiff District and said landowners are entitled hereunder.

XLV

That the contract herein sought to be validated in this proceeding does not provide for or recognize any right to acquire a perpetual and appurtenant water right to the use of water upon the part of the plaintiff District and/or

its landowners and does not provide any right of renewal at the end of forty years, and in fact, it is the expressed plan and objective of the Secretary of Interior to construe said contract as not giving or allowing a perpetual or appurtenant water right or any right of renewal, even though the waters in process of being appropriated for the benefit of the plaintiff District and the landowners therein be applied to beneficial use thereon.

That it is the expressed plan and objective of the Secretary of Interior to construe and enforce said contract as not providing any credit to the plaintiff District or the landowners within the plaintiff District of any construction cost component in the rates provided to be paid by the plaintiff District to the United States for said water to be delivered thereunder and to construe and enforce said contract as not [fol. 493] constituting a repayment contract providing for the return to the United States Treasury of a portion of the construction cost obligation of said Central Valley Project allocated to irrigation and assigned for return by said District as provided by the Federal reclamation laws, or to any unit or units of said Central Valley Project used or useful in serving water to the plaintiff District. That it is the expressed plan and objective of the Secretary of Interior to construe and enforce said contract as not constituting a repayment contract and as not requiring or providing for or allowing any credit on an appropriate share of the fixed charges taking anywise into consideration that part of the construction costs of the works used and useful in the delivery of water to the plaintiff District and which said costs are allocated or allocable to irrigation, and to construe, enforce and apply said contract as not entitling the plaintiff District or the landowners therein to any credit or credits upon said project construction costs allocated or allocable to irrigation.

XLVI

It is the expressed plan and objective of the Secretary of Interior to interpret, construe, apply and enforce said contract, if validated, as being a so-called "utility-type" contract, to wit: a contract entitling the United States to keep and maintain the possession of all of the major

works and canals of the Central Valley Project in perpetuity and to deliver water from said Project to the plaintiff [fol. 494] District and other irrigation districts and similar public agencies receiving water from said Project, without regard to the laws of the State of California and so as to enable the United States to in perpetuity dictate the terms and conditions for the delivery of water from said works in said Project and in particular to the plaintiff District, and in doing the foregoing, to deny to the plaintiff District and/or any landowners therein, or other similar districts and landowners therein, any permanent or appurtenant water right or right of renewal of the aforesaid contract.

XLVII

That it is the expressed plan and objective of the Secretary of Interior to interpret, construe, apply and enforce said contract with respect to the matter of limiting and controlling the delivery of water to the plaintiff District from said project so as to limit the acreage to which water may be delivered to any individual landowner by applying from time to time and under rule and regulation of the Secretary of Interior, acreage and other limitations so as to prevent the delivery of water by the Irrigation District to landowners within the Irrigation District in any instance where a single man owns more than 160 acres within the Central Valley Project, or where a man or wife dies and the survivor becomes the owner of more than 160 acres within the Central Valley Project or where a married man and wife own more than 320 acres within the Central Valley Project; that the Secretary of Interior contends that the [fol. 495] Federal Reclamation Laws contain provisions purportedly authorizing the Secretary of Interior to impose other limitations as to the use of water under the various provisions of the unrepealed reclamation laws, including provisions thereof requiring residence on or near the land to be served with water and requiring occupancy of the land by the landowner to be served with such water and requiring forfeiture to the United States for the failure or refusal of a landowner to observe the requirements of the Secretary of Interior with respect to acreage limitations, residence and occupancy; that it is the ex-

pressed plan and objective of the Secretary of Interior to require a landowner, as a prerequisite to obtaining any water for any of his land within the District to "voluntarily" select the 160 acres, if single, or the 320 acres, if married, which he will retain from his land holdings in excess thereof and to refuse and prevent the delivery of water to lands held by a single person in any one ownership in excess of 160 acres, or if married, in excess of 320 acres, until and unless said landowner "voluntarily" signs a recordable contract agreeing to sell the so-called "excess acreage" at a price to be fixed by the Secretary of Interior, without regard to the availability of water for said land, although enforcing and requiring the Irrigation District to assess all land owned by the individual landowner within the District as in the case of the assessment of so-called non-excess lands, and of refusing and preventing the de- [fol. 496] livery of water to any land within the District in the event that the landowner shall have failed, neglected or refused, or be unable to pay an annual assessment levied by the District on his said lands, although the landowner may have paid all other charges required by the District for the delivery of water and to apply provisions of the reclamation law claimed to authorize and entitle the Secretary of Interior to fix the acreage which may be owned by any one person to that area or acreage which the Secretary may deem sufficient for a family-size farm, although less than 160 acres.

XLVIII

That the contract in question contains no statement, criteria, yardstick or requirement for the payment of the maximum amount of money to be payable to the United States for construction costs for the major works used or useful in connection with the Central Valley Project for the delivery of water to the plaintiff District, and that the election notice relative to the election held by the plaintiff District for the approval or disapproval of the contract in question does not contain a statement of the maximum amount of money to be payable to the United States for construction purposes relative to any of the major works of the Central Valley Project used or useful to the delivery of water from said Project to the plaintiff District.

XLIX

That the Secretary of Interior contends that the Federal [fol. 497] Reclamation Laws contain provisions purportedly authorizing the Secretary of Interior under rule and regulation of the Secretary of Interior to be made from time to time, to: (1) reguiate and require crop practices within the plaintiff District to be approved by the Secretary; (2) regulate and limit the size of farm units within the plaintiff District to not less than 10 or more than 160 acres; (3) require residence of the landowner upon his land or occupancy thereof by him within the plaintiff District; (4) limit delivery of water to farm units smaller than 160 acres within the plaintiff District; (5) determine the irrigability of land within the plaintiff District and to otherwise regulate and direct operations within the plaintiff District by the plaintiff District and the landowners therein under the guise of procuring and obtaining the solvency of said project, all of which would be and are without authority or warrant in either Federal or State Law and in violation of the rights and interests of the landowners within said Madera Irrigation District and would amount to the taking of property without due process and without compensation.

L

That the Water Project Authority of the State of California has made no contract with the United States or any agency thereof by the terms of which the United States is given the possession of said Central Valley Project or the right to make any contract or contracts with individual irrigation districts to be served within said project and [fol. 498] that the only contract existing between the Water Project Authority of California and the United States relative to the construction, use and operation of said Central Valley Project and/or the collection of revenues therefrom and the application of the same to the costs of said project is as contained in that certain contract as set forth in paragraph XIII of these findings.

LI

That the contract herein sought to be validated, if validated and applied as contended for by the Secretary of Interior and the United States of America, would take private property of the plaintiff District and the landowners therein, without due process and without compensation therefore.

LII

That the United States, acting by and through the Bureau of Reclamation of the Department of the Interior, as assignee of the applications to appropriate water herein found to be made by the Department of Finance of the State of California and assigned by said Department to the United States, and by reason of the trustee relationship of the United States relative thereto, is under a duty and obligation to perfect the applications to appropriate water made by the Department of Finance of the State of California and assigned to the United States as herein found, and to perfect the other filings and applications made for the benefit of the Central Valley Project held in the name of the United States, or any of the agencies there-[fol. 499] of, so as to enable the State Engineer of the State of California in the exercise of his lawful discretion in accordance with and pursuant to State Law to cause appropriate permits and licenses to be issued in connection with such appropriations of water for the use and benefit of the acreages to be served, including in particular the lands within Madera Irrigation District and the said 19,500 acres excluded from the District; and the water users and landowners therein; and that the United States has failed and neglected to perform this duty.

LIII

That said contract, Exhibit "A", if validated would require and the Secretary of Interior would so apply and enforce said contract, as requiring plaintiff District to assess all lands within the boundaries of said District to pay its obligation to the United States, as well as other District costs, and the lands of the answering landowner

defendants herein with the other landowners of the District are and would be liable for all such costs and at the same time said contract would be by the Secretary and said plaintiff District enforced as depriving said landowners, notwithstanding such assessments, of their ordinary rights to water as provided by irrigation district law within the State of California, thereby depriving the answering landowner defendants and other landowners within the plaintiff district of their property without due process and without compensation.

LIV

[fol. 500] That there are no irrigable public lands of the United States subject to reclamation within the service area of the Central Valley Project of California.

LV

The provisions of Article 26 of said purported contract marked Exhibit "A" and before this Court for validation, if validated would constitute a delegation of power of the Board of Directors of Madera Irrigation District to the United States.

LVI

The failure to designate by the terms of said contract marked Exhibit "A" which of the Federal Reclamation Laws are applicable and which of said Federal Reclamation Laws are not applicable to said purported contract and the placing by the terms of said purported contract in the Bureau of Reclamation of the Department of Interior, the power to designate which of said Federal Reclamation Laws are applicable or not applicable constitutes a delegation of power by the Board of Directors of Madera Irrigation District to the United States, its officers and agents.

LVII

The answering landowner defendants, and each of them, and all of the landowners within Madera Irrigation District are entitled to their pro-rata share, for all of their lands, of the water and water rights owned and held by Madera Irrigation District; the answering defendants who

[fol. 501] own more than 160 acres as individuals, or 320 acres as husband and wife, including defendants Warren Ocheltree and Clarice A. Ocheltree, his wife, Jerold Ocheltree, Hazel O. Ocheltree, Phillip Albonico and Jane E. Albonico, his wife, and others, are more particularly set forth in their respective answers on file herein, own lands within the boundaries of Madera Irrigation District which are "excess lands" as said term is described in Article 30(a) of said purported contract marked Exhibit "A" and before this Court for validation; the provisions of said Articles 28, 29 and 30 of said purported contract, purport to deny and deprive said answering defendants "excess lands", said lands' pro-rata share of the water distributed by Madera Irrigation District; said deprivation constitutes a breach of trust heretofore alleged and constitutes taking of property without due process and without just compensation or any compensation.

LVIII

The contract dated the 24th day of May, 1939, between the United States and the plaintiff District, and marked Exhibit "B" attached to the second amended complaint, obligates the United States to afford plaintiff District the opportunity to execute with the United States a contract recognizing a vested right on behalf of the landowners in said District to the continued and permanent delivery of water from the project, for beneficial use upon and appurtenant to all of the lands within said District as said District was then constituted in accordance with the laws of the State of California; the provisions of the purported [fol. 502] contract marked Exhibit "A" and before this Court for validation do not give or purport to give, but in fact purports not to give a permanent, appurtenant water right to the lands within the boundaries of said District, as said boundaries were constituted on the 24th day of May, 1939, or to the lands within the boundaries of said District as the boundaries of said District were constituted on the purported date of execution of said contract marked Exhibit "A"; said purported contract marked Exhibit "A" purports to limit the said water right for a period of forty years.

LIX

The purported terms and provisions of said purported contract marked Exhibit "A" and before this Court for validation, as set forth in Article IV on page 6 of said Exhibit as attached to the Second Amended Complaint, which purport to recognize the right of the lands within the District to a permanent and perpetual and appurtenant water supply are indefinite and uncertain and do not contain any provision relative to the making of a future contract in recognition of said rights, or the terms and conditions for renewal of said contract.

LX

If the purported contract marked Exhibit "A" and before this Court for validation were validated, the provisions of Article 4 of said Exhibit "A" which provide that said purported contract marked Exhibit "A" shall constitute full satisfaction of the District's right under Article 14 of said [fol. 503] contract marked Exhibit "B" dated the 24th day of May, 1939, would deprive these answering defendants of property and property rights without due process and without payment of just compensation therefor; the terms and provisions of said contract marked Exhibit "A" do not constitute a full satisfaction of the District's rights under Article 14 of the contract marked Exhibit "B"; the rights provided for and contained in said contract marked Exhibit "B" are perpetual and appurtenant to all of the lands within the boundaries of the District and as the boundaries were constituted on the 24th day of May, 1939, and as they are now constituted, including the land of all of these answering defendants; the terms of the purported contract marked Exhibit "A" are limited in its application and scope by reason of Articles 28, 29 and 30; the contract marked Exhibit "B" does not in any way limit the use or distribution of water to be supplied to Madera Irrigation District pursuant to the terms of the contract marked Exhibit "B".

LXI

Prior to the proposed execution of the purported contract marked Exhibit "A" and before the Court for valida-

tion and during the negotiation of the terms of said purported contract, the Board of Directors of Madera Irrigation District and its agents, servants and employees, as they were then constituted, requested that the United States execute a contract with the District pursuant to the terms of the 1939 contract, which would not contain the land limi-
[fol. 504] tation provisions as more specifically set forth in paragraphs 28, 29 and 30 of said purported contract marked Exhibit "A"; the United States failed, neglected and refused to execute such a contract with the Board of Directors of Madera Irrigation District and refused to delete the said excess land limitation provisions, as more specifically set forth in paragraphs 28, 29 and 30, from said purported contract and refused to execute any contract or to supply surface irrigation water to the lands of Madera Irrigation District without the incorporation therein of said excess land limitation provisions and the said paragraphs 28, 29 and 30.

LXII

The terms and conditions of the purported contract marked Exhibit "A" and before this Court for validation relative to the excess land limitations as contained in paragraphs 28, 29 and 30 therein and the failure of said purported contract to extend to Madera Irrigation District credit upon construction costs and the failure of said purported contract to specify what portion of the construction costs of the Central Valley Project are attributable to and are to be paid by the Madera Irrigation District and the failure of said purported contract to give to Madera Irrigation District for all of the lands located therein, or any of the lands located therein, any permanent right, are contrary to the terms of the contract marked Exhibit "B", dated the 24th day of May, 1939; the imposition of said terms and conditions are without right and are in violation of the
[fol. 505] said contract marked Exhibit "B" and dated the 24th day of May, 1939; there is no additional consideration from the United States to Madera Irrigation District to support the imposition of said terms and conditions of said contract marked Exhibit "B".

LXIII

The sole and entire operation of the Madera Irrigation District in relation to the lands within the boundaries of said District would be required to conform with and be subject to the purported contract marked Exhibit "A", if said contract now before this Court were to be validated; if sections 28, 29 and 30 of the purported contract marked Exhibit "A" and before this Court for validation, were valid and in force and effect, said provisions would constitute a restraint and restriction upon the right to inherit or succeed to property and/or property rights; said provisions of said purported contract constitute a restraint upon testamentary disposition of property and/or property rights.

LXIV

That in considering the portions of the purported contract marked Exhibit "A" and before this court for validation, which relate to the construction of a distribution system as is more particularly set forth in part B thereof, the Court finds that it is true:

1. That the provisions of part B are indefinite and uncertain, in that it cannot be ascertained from the provisions [fol. 506] of said purported agreement what the United States agrees to build for the sum of $8,320,000 or the type, nature and extent of the lateral system to be constructed by the United States.

2. That the United States does not agree therein to perform or accomplish a specified result; it only agrees to expend the sum of $8,320,000 or so much thereof as the United States deems expedient or necessary toward the construction of a distribution system and that said distribution system shall be deemed completed within the meaning of said purported contract at such time as the United States notifies the District in writing that the total expenditures have been made; that the United States represented to the Board of Directors of Madera Irrigation District and all of the landowners therein, that a complete distribution system to each 160 acres of irrigable land within the boundaries of the District could be constructed by the United

States for the sum of $8,320,000; that subsequent to the purported execution of the contract before the Court for validation, the United States informed the Madera Irrigation District and the Board of Directors thereof, that the cost of a lateral system to each unit of 160 acres as described in said purported contract in part B thereof, would cost in the neighborhood of $15,000,000 instead of the sum of $8,320,000; that prior to execution of said purported contract now before the court for validation the United States further informed the Board of Directors of the Madera Irrigation District that the sum of $8,320,000 would [fol. 507] supply a complete lateral system to each unit of 160 acres or a total area of 112,000 acres of irrigable land within the District; that subsequent to the execution of said purported agreement marked Exhibit "A", the United States through the Bureau of Reclamation, informed the Board of Directors of said District and said District and all of the landowners therein, that the sum of $8,320,000 would provide a system which would deliver water to each 160 acre unit for only 33,000 acres of irrigable land within the boundaries of the District; that the Board of Directors of Madera Irrigation District had purportedly authorized the United States, acting by and through the Bureau of Reclamation, to proceed with the construction of a distribution system to each 160 acre unit of a total of approximately 33,000 acres of land and to expend the entire sum of $8,320,000 therefor; that said purported authorization to construct a partial distribution system for the sum of $8,320,000 instead of a complete distribution system for the sum of $8,320,000 was not presented to the voters of Madera Irrigation District for their approval or disapproval and was not consented to by the voters of Madera Irrigation District; that the construction of a partial distribution system for the sum of $8,320,000 to 33,000 acres of irrigable land instead of a complete distribution system to 112,000 acres of irrigable land as originally contemplated under the terms of said purported contract and under the representa- [fol. 508] tion made by the United States and accepted by said District and all the landowners therein, constitutes a fraud upon the landowners of Madera Irrigation District.

3. That the terms, covenants and conditions set forth in part B of said purported contract marked Exhibit "A"

wholly fail to protect the interest of and the property rights of the landowners within the boundaries of Madera Irrigation District and in this respect the execution of said purported contract constituted an abuse of discretion and a fraud on the part of said Board of Directors of said Madera Irrigation District and was ultra vires and void.

LXV

Subsequent to the purported execution of the purported contract marked Exhibit "A" and before this Court for validation, the sole and entire operations of Madera Irrigation District in relation to the lands within the boundaries of said District, including the lands of these answering defendants, has been pursuant to and in conformity with the said purported contract marked Exhibit "A"; the Board of Directors of Madera Irrigation District have levied assessments upon all of the land within the boundaries of Madera Irrigation District, including the lands of the answering defendants herein and including the land of the answering defendants defined as "excess lands", which said assessments have been collected by the Board of Directors of the Madera Irrigation District and have been paid to the [fol. 509] United States pursuant to the purported terms of the purported contract marked Exhibit "A" and before this Court for validation; the answering defendants have paid all assessments levied upon their lands by Madera Irrigation District but that in paying said assessments, have not consented to nor acquiesced in the payment of said funds derived by said assessments by Madera Irrigation District or the Board of Directors thereof, to the United States, pursuant to the purported terms of the purported contract marked Exhibit "A"; as to the excess lands of the answering defendants as set forth in the description thereof in their respective answers on file hereto and as defined in said purported contract marked Exhibit "A", the assessments so levied by Madera Irrigation District were assessments without benefit to said lands and were illegally, unconstitutional and void and deprived the answering defendants of property without due process and without payment of just compensation.

LXVI

The purported execution by the Board of Directors of Madera Irrigation District of the purported contract marked Exhibit "A" and before this Court for validation, constituted an act contrary to the objects and purposes for which Madera Irrigation District was formed, which object and purpose is to benefit all of the lands within the District by obtaining and distributing such water as may be necessary for the irrigation thereof, thus enabling each landowner within the District to have for his land the benefit [fol. 510] of a common irrigation system.

LXVII

No consent to the purported provisions of the purported contract marked Exhibit "A" and before this Court for validation, was given by the answering defendants or any of them.

LXVIII

That the defendant Jerold Ocheltree (and other landowner defendants appearing herein) have been advised by the Bureau of Reclamation of the United States, Department of Interior, that in order to obtain any water for their excess lands (as said lands are defined in said contract) that they will be obligated to sell, or authorize the Secretary of Interior by a recordable contract between said defendants and the United States to sell all of their lands in excess of 160 acres (or in excess of 320 acres if married) and to designate their lands not in excess of 160 (or 320) acres upon which each desires to obtain water, and that without taking such action they will not be delivered any water by the District for said excess lands.

Conclusions of Law

From the Foregoing Facts, the Court Concludes:

I.

The Court concludes that the contract of May 14, 1951, between the Madera Irrigation District and the United

States of America, acting by the Bureau of Reclamation, is [fol. 511] invalid and unenforceable. This conclusion follows and is based upon the facts found and set forth herein, and upon each fact as found by the Court, and is independent of any other of the conclusions, or portions thereof.

II

Under the Constitution of the State of California, and in particular Article XIV, Section 3 thereof, and by the law of the State of California, this State, as sovereign, is vested with title to, ownership and control of all water within the State for and on behalf of the People of the State; it is the policy of this State that the water resources of the State shall be put to beneficial use to the fullest extent of which they are capable; appropriation of water may be made only for a beneficial use, in accordance with State Law, and then only for the duration of such beneficial use; and when such use ceases, the right thereto is forfeited to the State, and the right to the use thereof may again be acquired in the manner prescribed by State Law; and the right to the use of water for irrigation shall be appurtenant to the land irrigated, such right being a form of real property. Under the Constitution of the United States, and in particular the Tenth Amendment thereto, no Federal enactment, rule or regulation may validly override the said provisions and requirements of the State Constitution and Law. The Congress of the United States has explicitly so recognized in the Federal Reclamation Act of 1992, Section 8, and other legislation.

[fol. 512]

III

The United States is not the owner of the water supplied and to be supplied from the Central Valley Project and which is the subject-matter of its contract with the District. The interest of the United States in such water is limited in all respects by the law of this State ("law" being hereinafter used to include, unless otherwise indicated, the Constitution, statutes, rules and regulations, and court and administrative decisions of this State). As a storer and carrier of the water delivered from the Central Valley

Project, the United States to the extent that such water may be available, is obligated to deliver such water, to all beneficiaries of said project within the Sacramento and San Joaquin Valleys, including the plaintiff District and the landowners therein and the owners of the said 19,500 acres excluded from said District. The United States is obligated to acquire from the State of California acting through the State Engineer, rights to the use of water sufficient for the purposes of the Central Valley Project, and the use which the United States may make of such water is limited by the conditions which the State Engineer may impose, under State Law relating to the appropriation of water, in any permit which may be issued to the United States for purposes of the Central Valley Project. That nothing contained in these findings and conclusions is intended to or shall in any wise, interfere with, restrict or limit the lawful discretion of the State Engineer in acting [fol. 513] upon such applications, and in the issuance of permits and licenses pursuant thereto, and in conditioning the same in the public interest.

IV

The Madera Irrigation District is lawfully organized and existing pursuant to the laws of the State of California, but it has the capacity to contract with the Federal Government only to the extent permitted by State law, and any such contract may be validated only if it is consistent with State law.

Invalidity of Election

V

That the notice of election published by Madera Irrigation District for the election to be held on the 9th day of May, 1951, was invalid, illegal and of no force or effect; that the election purportedly held on the 9th day of May, 1951, was improperly and illegally called; that no approval of the purported contract marked Exhibit "A" resulted from the said purported election; that said election was not duly and regularly held as provided by law; that the publication by the Board of Directors of Madera Irrigation

ing the inclusion of a contractual provision for the delivery and distribution of water under Acts of Congress and the rules and regulations established thereunder, authorizes such delivery and distribution only under acts, rules and regulations as are consistent with generally-applicable State law, and also only under valid Federal statutes, rules and regulations. Under the Constitution of the State of [fol. 534] California, and particularly Article XIV thereof, and under the Constitution of the United States and particularly the Tenth Amendment thereto, and under Section 8 of the Reclamation Act of 1902, the United States may not validly impose conditions on the delivery and distribution of water which are inconsistent with State law.

Invalidity of Contract Under Federal Law

XXXIII

Properly construed, the Reclamation Act of 1902, as amended, and other Federal laws, do not permit the United States, acting by the Bureau of Reclamation or otherwise, to impose or become a party to a contract containing the provisions and of the character set forth above.

XXXIV

The contract of May 14, 1951, is invalid and unenforceable for the fu ther reason that the Secretary of the Interior, pursuant to rule and regulation, may in relation thereto apply numerous unrepealed provisions of the Act of Congress of June 17, 1902, and acts amendatory thereof or supplementary thereto, all collectively styled the Federal reclamation laws, and generally referred to in the contract as the basis thereof; and that the application to the contract of many of such provisions would adversely and materially affect the contract and the rights of the District and the landowners thereunder.

[fol. 535]

XXXV

In addition, the contract is in violation of Federal law in the following particulars:

A. Part A of the contract purports to be a utility contract for the sale of project water, thereby implying that the United States is the owner of said water in violation of Section 8 of the Reclamation Act of June 17, 1902, which provides that the Secretary of the Interior in carrying out the provisions of the act shall proceed in conformity with the laws of the States or Territories relating to the control, appropriation, use or distribution of water in irrigation, or any vested right acquired thereunder.

B. Part A of the contract fails to comply with the repayment provisions of Federal Reclamation laws in not stating the total or any amount to be repaid by the District and its landowners of that portion of the reimbursable costs of the project allocated to irrigation and assigned for repayment by the water users; and the contract fails to specifically credit any part of the annual rates for water to the repayment of the District's obligation for project construction costs.

C. Part A of the contract is in negation of and does not afford to the District and its landowners the opportunity to acquire a right to the permanent delivery of project water appurtenant to the land irrigated and all intendments of the contract are that at the end of 40 years no [fol. 536] project water will be delivered to the District except in the discretion of the Secretary of the Interior.

D. The provisions of Sections 28, 29 and 30 of the contract relating to excess lands are in violation of Section 8 of the Reclamation Act of June 17, 1902, in that such limitations on the acreage to which water may be delivered is in violation of the laws of the State of California.

XXXVI

Further with respect to Federal law, the contract of May 14, 1951, by its terms and provisions is unenforceable for the reason that it is indefinite, uncertain, misleading and lacking in mutuality regarding the relationship of the parties toward each other with respect to project water and the relative rights and duties of the respective parties in connection therewith, and for the reason that it denies

District of false and misleading statements concerning the provisions of the contract constituted a fraud; that the true results of said election cannot be ascertained.

VI

That the water rights, real property and other proper-
[fol. 514] ties and in particular the land, ground and site upon which Friant Dam is now built, together with a gravel pit and a supply of gravel and material for construction of said Dam, together with rights of way and easements and water rights and filings upon waters of the San Joaquin River, as more particularly set forth and described in contract dated the 24th day of May, 1939, were acquired and held by the Board of Directors of Madera Irrigation District in trust for all of the landowners within the boundaries of said District as said boundaries were then constituted; that said boundaries then contained all lands of the answering defendants herein.

VII

That any right, title or interest which the United States acquired under and by virtue of said contract dated the 24th day of May, 1939, in and to said properties and/or water and/or water rights was and is held in trust by the United States for the benefit of all landowners within Madera Irrigation District and the owners of the 19,500 acres excluded from said District, including these answering defendants and/or their predecessors in interest.

VIII

That subject to the provisions of the trust hereinbefore and hereinafter set forth and the express limitations upon the terms of a contract between the United States and Madera Irrigation District, hereinbefore and hereinafter set forth respecting the contract before the Court, the con-
[fol. 515] tract dated the 24th day of May, 1939, between Madera Irrigation District and the United States is a valid and existing agreement.

That the right to receive a water supply pursuant to the contract dated the 24th day of May, 1939, was held by Madera Irrigation District as trustee for the use and benefit of all of the landowners within the District, together with the landowners of the 19,500 acres of land excluded from said District; that all of the landowners within Madera Irrigation District, together with the landowners of the said 19,500 acres of land and including all of these answering defendants were and are the beneficiaries of said trust. That the purported transfer by Madera Irrigation District to the United States, in the document dated the 14th day of May, 1951, and before this Court for validation, of the pro rata share of the right to receive a water supply pursuant to said 1939 contract for the 19,500 acres to the United States would consfitute taking of property without due process of law and without just compensation; that the quantity of water purportedly transferred by the contract before this Court for validation to the United States and the right, if any, to the use and benefit thereof held by the United States by and through the Department of Interior of the United States Bureau of Reclamation, is held in trust for the owners of said 19,500 acres of land.

[fol. 516]

X

Prior to the execution of the contract dated the 24th day of May, 1939, and at all times subsequent thereto, Madera Irrigation District held as trustee for all of the landowners within the boundaries of said District, including the landowners of the said 19,500 acres excluded from said District, a vested right to a permanent supply of water from the San Joaquin River and other sources, appurtenant to all of the lands then in said District, subject to and in accordance with the laws of the State of California, by reason of applications to appropriate unappropriated water from said river and other sources duly filed by the said District or its predecessors, with the State Engineer, Division of Water Resources of the State of California; that the purported substitution by the contract marked Exhibit "A", dated the 14th day of May, 1951, now before the Court for

validation of a temporary right to receive project water from the United States in accordance with the terms of said contract marked Exhibit "A", in lieu of said appropriative rights to a permanent water supply, initiated by said District, in accordance with State law, would constitute a deprivation of property to the landowners within Madera Irrigation District and the landowners of the said 19,500 acres of land excluded from Madera Irrigation District to the use of said waters by reason of the limitations imposed upon them by Articles 28, 29 and 30 of the contract before this Court, without due process of law and without [fol. 517] just compensation therefor and further constitutes a breach of said trust as hereinbefore set forth.

XI

That it was agreed between the United States and plaintiff Madera Irrigation District, by the contract dated the 24th day of May, 1939, that the owners of all of the lands within the boundaries of the plaintiff Madera Irrigation District, including the 19,500 acres excluded from the boundaries of the District were and are permanently entitled to delivery by the United States of the quantities of water set forth in said contract dated the 24th day of May, 1939; that said contract right is binding upon the United States subject only to the assignment of a portion of said quantity to the Chowchilla Water District pursuant to the agreement dated the 24th day of August, 1949, accepted and approved by the Secretary of Interior of the United States on the 16th day of September, 1949; that accordingly the owners of said lands were and are entitled to the said delivery of said quantities of water without the restrictions and conditions imposed by Articles 28, 29 and 30 of the contract before this Court; that said contract right to receive said water is a continuing right to the permanent delivery of water from the project to all lands in said District; appurtenant to the lands irrigated, subject to and in accordance with the laws of the State of California; that the United States is entitled to payment therefor at the rate of not to exceed $3.50 per acre foot for [fol. 518] Class 1 water and $1.50 per acre foot for Class 2

water, which waters are defined in said contract dated the 24th day of May, 1939; that said Madera Irrigation District and said landowners, and each of them, are entitled to credit by the United States toward the payment of said lands and District's share of the construction costs of the Central Valley Project as more particularly hereinbefore found and as more specifically hereinafter concluded.

Trustee Relationship of United States; Vested Rights Acquired by Irrigation Districts and Landowners

XIII

In order for the United States to carry out the purposes of the Central Valley Project, particularly the delivery of water therefrom to project beneficiaries, including plaintiff District and its landowners, it became desirable and expedient that the State of California assign in trust to the United States for the uses and purposes of the Central Valley Project applications to appropriate unappropriated water and the water rights referred to in Findings XII, XVII, XXV, XXVI, and XXVII and also to acquire other applications and said appropriative and other rights to water referred to in Findings VI and VII and to perfect [fol. 519] all such applications by securing permits pursuant to the laws of the State of California, for the use of all such water by said project beneficiaries, including the plaintiff District and the landowners therein and the landowners of said 19,500 acres excluded from said District. All rights to the use of water heretofore acquired by the United States for purposes of the Central Valley Project, as well as all rights to the use of water in process of acquisition and to be acquired for such purposes, are held by it in trust for the beneficiaries of said project, including plaintiff District and its landowners, and the landowners in said 19,500 acres excluded from the District, all of whom have a present, vested right to the faithful fulfillment and execution of said trust. That for the last several years, water has been delivered by the United States Bureau of Reclamation to the plaintiff District and its landowners for the irrigation of lands within the District, and subject to the

laws of the State of California and the discretionary powers of the State Engineer in issuing permits and licenses, said District and its landowners, and the landowners in said 19,500 acres excluded from said District, acquired contingent, conditional and inchoate property rights to a permanent supply of project water which said rights are now vested in said landowners and who will upon the perfection of said appropriative rights in conformity with said State laws, acquire full title to the use of said water on said lands, with priority relating back to, and [fol. 520] as of the date of the applications to appropriate, perpetually appurtenant to their land and subject only to conditions lawfully imposed pursuant to State Law; that by the transfer to the United States by the District of said rights of the District to appropriate water pursuant to its applications theretofore filed with the State Engineer of the State of California, the said owners of land within said 19,500 acres so excluded from the District, and the District on behalf of its landowners, have acquired and now possess additional vested rights to a permanent supply of project water.

XIV

Any and all rights to the use of water acquired or to be acquired by the United States for purposes of said project are held in trust and dedicated to carrying out the purposes and objects of said project, including the delivery of said water to plaintiff District and its landowners, and the landowners of said 19,500 acres excluded from said District; and such water is required to be delivered to such lands for use thereon and as appurtenant to the lands irrigated thereby, subject only to conditions lawfully imposed in accordance with State law, and under the burden of repayment to the United States of the reasonable charges for storing and transporting the appropriated water as elsewhere herein set forth.

XV

The State Engineer of the State of California, in accordance with the law of this State, is Chief of the Division [fol. 521] of Water Resources, and in his official capacity

as State Engineer is authorized and directed by State law to pass upon all applications to appropriate water and in his lawful discretion to grant or to deny the same, and if granted to issue permits and licenses thereon in accordance with State law. Said State Engineer is required to insert in all such permits and licenses certain terms and conditions concerning the use of water thereunder, and in addition thereto is authorized to include therein terms and conditions which in his judgment are in the public interest relative to the use of water thereunder; and said State Engineer is also authorized to maintain actions to enjoin in appropriate proceedings any waste or unlawful use of water. If and when such permits are issued to the United States pursuant to said applications to appropriate unappropriated waters for purposes of said project as herein set forth, the United States will continue to hold such rights recognized thereby solely as trustee, and the beneficial title to such waters will be in the landowners within the service area of said project, including plaintiff District and said 19,500 acres of land excluded from said District for and on behalf of the landowners therein. The owners of any and all lands within the Madera Irrigation District and of said 19,500 acres so excluded are entitled to equal rights, without discrimination, to receive water from such project and to apply the same upon their lands, subject [fol. 522] only to conditions lawfully imposed in accordance with State Law and the payment of charges sufficient to return to the United States its due proportion of the reimbursable and returnable costs of said project.

Mandate of Federal Law to Conform to State Law; Trust Relationship

XVI

The Secretary of Interior in constructing, operating and maintaining the Central Valley Project was at all times herein subsequent to the limitation of construction of said project by the United States, and now is, under mandate from the Congress of the United States to proceed in accordance with the laws of the State of California in acquiring rights to the use of water for purposes of said

project and to hold and retain such applications, rights and interests not for its own use and benefit but for the use and benefit of the beneficiaries of said Central Valley Project, including plaintiff District and the landowners therein and the landowners of said 19,500 acres excluded from said District. The true right, title, and interest and ownership of all rights to the use of water acquired or to be acquired by the United States for purposes of said project, immediately upon the acquisition of such rights, gave and do give rise to a resulting trust, with the State of California, as the trustor, the United States, acting through the Secretary of the Interior and the United States Bureau of Reclamation, as trustee, and the landowners comtemplated (sic) to be served with water by means of such project, including [fol. 523] the landowners in plaintiff District and the landowners of said 19,500 acres excluded from said District, as the beneficiaries of such trust; and the United States as trustee for all project beneficiaries has the duty and obligation to perfect its applications to appropriate water in accordance with State law, which it has failed and neglected to do in violation of its trust.

Reimbursement to United States: Credit to District and Landowners

XVII

The project as authorized, operated and maintained by the United States is a Federal assistance program, and the Secretary of the Interior in expending Federal funds for its construction, operation and maintenance, has so done and is doing so subject to ultimate appropriate repayment by the State, or local districts and agencies thereof, of the reimbursable costs of the project in accordance with the Federal Reclamation laws.

XVIII

The United States has the right, duty and obligation to recover, in accordance with the Federal Reclamation laws, that portion of the reimbursable project construction costs allocated to irrigation and assigned for repayment by the water users, and the District and all landowners therein,

including the defendant landowners appearing herein, are obligated to pay for a proportionate share of the cost of delivery of project water, and a proportionate share of the [fol. 524] project construction costs, and in the payments made for such purposes are entitled to credit for that portion of payments which should appropriately be applied to the repayment of project construction costs.

XIX

The District and the landowners therein upon the repayment of a proportionate share of the project construction costs are entitled, subject to compliance with State law, including conditions which may be imposed by the State Engineer in permits and licenses to appropriate water, to the continued delivery of project water by the United States as a right appurtenant to all of the District lands at such rates only as may be required to cover the District's proportionate share of costs of operation and maintenance.

The District: State Law

XX

The directors of the District in the management of the affairs thereof, and in the delivery of water made available by the project to the landowners therein, are governed by the laws of the State of California relating to irrigation districts.

XXI

The District is an organization created and governed by and for the electors thereof and bears a trust relationship to the landowners therein and in carrying out such trust is obligated by State Law relating to irrigation dis- [fol. 525] tricts, to deliver water received by it from said Central Valley Project to each parcel of land within the District regardless of size thereof, in proportion that District assessment on each parcel bears to the entire District assessment on all lands.

XXII

In dealing with irrigation Districts and other users of project water for irrigation, the Legislature of this State

may not, consistent with the California Constitution, and particularly Article IV thereof, delegate to Congress the power to legislate relative to the use of such water in contravention of State Law, nor authorize the Secretary of the Interior to enforce Federal law relative to the use of project water in contravention of State law.

Rights of, and Limitations upon, United States

XXIII

Subject to the rights of the State of California and the Water Project Authority of the State of California, as recited and found in paragraphs XIII and XVII of the Findings herein, the United States and the plaintiff District may lawfully enter into a contract for the delivery of water and repayment by said District to the United States of that portion of said project costs allocated to irrigation and assigned for repayment by the water users and found by the Secretary of the Interior to be within the ability of the [fol. 526] water users to repay. (The remainder of such costs allocated to irrigation to be repaid from power and other revenues.) Said contract may provide for an annual charge by the United States to the plaintiff District, including construction charges, and operation, maintenance and overhead charges on the basis of a sum not to exceed $3.50 per acre foot for class one water and a sum not to exceed $1.50 per acre foot for class two water, said sums having been determined to be the maximum charge within the ability of the water users to repay. Such contract must provide for a credit for the payments made by the plaintiff District upon such charges and provide that when such charges have been paid in full no further construction charges shall be collectible from the plaintiff District or landowners therein. The contract may not be the so-called "utility-type", limited-term contract contended for by the Secretary of Interior as hereinbefore found, particularly in paragraphs XXXIX, XL, XLI, XLII, XLIII, XLIV, XLV, XLVI, XLVII, XLVIII, XLIX, and LIII of the Findings herein.

XXIV

The United States may not, by virtue of its physical possession and ownership of the dams, reservoirs and main canals constituting the major works of said Central Valley Project, or by virtue of the possession of any other works necessary or useful in the delivery of stored waters of the Central Valley Project, withhold waste, or otherwise pre- [fol. 527] vent the application to beneficial use of Central Valley Project Waters, but is obligated to conform to the laws of the State of California relative to the control, appropriation, use and distribution of the waters of the Central Valley Project, and in that connection is required to permit such water to be put to beneficial use in accordance with the laws of the State of California and to recognize any and all vested rights. The United States is and shall be subject to the jurisdiction and direction of the State Engineer of the State of California as the executive officer of the Division of Water Resources of the Department of Public Works of the State of California as prescribed by the laws of said State in respect to acquisition of rights to the use of water by appropriation and respecting the use of such water, and that any and all rights to the use of water acquired or to be acquired by the United States for purposes of said project are dedicated to carrying out the purposes and objects of said project, including the delivery of said water to plaintiff District and its landowners and the landowners of said 19,500 acres so excluded from said District, and such water is and will be required to be delivered to such lands in perpetuity and as appurtenant to the lands irrigated thereby, subject only to conditions lawfully imposed in accordance with State law, and further subject to the payment to the United States of reasonable and appropriate charges in repayment of its reasonable [fol. 528] and necessary construction, operation, maintenance and replacement costs.

XXV

The plaintiff District and the landowners therein are entitled, subject to the rights and interests of the State of California and its agencies, as recited and found in

paragraph XVI of the Findings herein, to a contract for the delivery of water by the United States to all lands within the plaintiff District, which contract shall recognize and provide for a permanent and appurtenant water right, subject only to continued beneficial use and a fixed maximum charge to be paid by the plaintiff District for the plaintiff's share of the construction costs of the major works of the Central Valley Project used or useful in the delivering of water to the plaintiff District, as such costs have been allocated to irrigation and in part assigned for repayment by the water users within their ability to repay the same, and in which contract a credit to the District upon such costs and a manner and method of accounting for such credit is provided for, and from which contract the features of the present contract herein sought to be validated which are herein found and concluded to be illegal and objectionable, including said acreage limitations, are eliminated.

XXVI

It must be presumed, and is found and concluded, to have been determined by the Secretary of the Interior, that to the extent the water may be available to the United States [fol. 529] for such purposes, the plaintiff District and its landowners subject to the discretionary powers of the State Engineer in issuing permits and licenses to appropriate waters as herein found and concluded, are entitled each year, under an appropriate contract, to not less than the quantities of Class 1 and Class 2 water as specified in Part A of the purported contract; and pursuant to the same presumption, finding and conclusion, that the charges specified in Part A of the purported contract contain a component for the return by plaintiff District of some part of its proportionate share of project construction costs, and that such charges, pursuant to an appropriate contract, are reasonable and within the ability of plaintiff District and its landowners and are adequate to repay to the United States, each year, an appropriate share of necessary construction, operation and maintenance costs.

XXVII

The following provisions of the said contract of May 14, 1951, are invalid and unenforceable because they conflict with State law, including in particular the State Constitution, Article XIV, Section 3, and the State Water Code, Sections 22077, 22250, 22259, 26700-26993.

A. Article 20 of the contract, purporting to condition the delivery of water upon the payment of void assessments.

B. Article 22 of the contract, purporting to impose a penalty unknown to California law with respect to land [fol. 530] which is in default in payments to the District although the latter is not in default in its payments to the United States.

C. Article 6 (c) of the contract, purporting to forbid the District from disposing of surplus water outside the District.

D. Article 9 (c) of the contract, purporting to reserve to the United States the right to all waste, seepage and return flow which escapes or is discharged beyond the District's boundaries.

E. Article 11 of the contract, purporting to forbid the District from delivering or furnishing any water required under the contract for other than agricultural purposes.

F. Article 26 of the contract, purporting to forbid the District from making any change in its boundaries, such as by the inclusion or exclusion of lands.

G. Articles 28, 29 and 30 of the contract, purporting to forbid the District from furnishing water made available under the contract to any lands in excess of 160 acres, held by any single beneficial owner, unless the owner complies with certain further requirements, including the sale of all land in excess of said 160 acres at prices not in excess of those approved by the United States Secretary of the Interior.

H. Articles 19 and 21 of the contract, purporting to hold all lands within the District subject to an *ad valorem* [fol. 531] tax to defray the charges imposed upon the Dis-

trict by the contract, notwithstanding the provisions of Articles 28, 29 and 30 of the contract, above mentioned, prohibiting the furnishing of water to land in excess of said 160 acres.

XXVIII

The contract of May 14, 1951, is further invalid under State law, including the State Constitution, Article XIV, Section 3, for the following reasons:

A. Neither the contract, nor the notice of election which preceded it, contains or contained any statement of the maximum amount of money to be payable to the United States for construction purposes and cost of water supply and acquisition of property, nor any provision for the crediting of the payments to be made under such contract to the cost of the project. In this respect the contract conflicts with the State Water Code, Section 23223.

B. The contract does not provide for or recognize a water right appurtenant to the lands within the District, but negates such right and instead contemplates and permits a continuing power in the Federal Government to furnish or withhold water at the end of the contract period upon such terms and conditions as the United States may then impose.

C. The contract further is contrary to State law in that it purports to deprive the lands within the District, and particularly the lands of the landowner Defendants and those similarly situated, of water rights recognized under [fol. 532] State law.

D. The election purportedly held on May 9, 1951, for the approval of said contract by the landowners of said District was invalid, illegal and of no force and effect.

XXIX

With respect to the provisions of said contract having to do with the so-called "distribution system", the contract and provisions thereof are invalid and void, among other things, for the reason that said contract is indefinite,

uncertain, ambiguous and lacking in mutuality and that the election notice calling the purported special election for the approval of said contract did not and does not conform to the requirements of the laws of the State of California for such notice, and in that said election was not legally and fairly conducted, but was illegally called, held and conducted for the reasons more particularly recited in the Findings herein.

XXX

The contract of May 14, 1951, is invalid and unenforceable for the further reason that numerous of its provisions, purporting to vest an uncontrolled discretion in the Secretary of the Interior, are so ambiguous, indefinite, uncertain and lacking in mutuality as to deny the basis of any contractual undertaking recognized by State law, and in particular the State Water Code, Section 23195.

XXXI

[fol. 533] Further with reference to Conclusion XXII, the Irrigation District Federal Cooperation Law, enacted by the State in 1917 and codified as a part of the State Water Code in 1943, does not exempt from the application of State law, as above declared and applied, the contract of May 14, 1951. Said law authorizes contracts between irrigation districts, including the Madera Irrigation District, and the United States, but the validity of any such contract must be measured by its consistency with generally-applicable State law. Said law does not purport to, and under Article IV of the California Constitution could not validly authorize contracts which are inconsistent with generally-applicable State law or delegate to the Federal Government the power to legislate in behalf of the State. The provisions of the contract above referred to, even if warranted under Federal legislation, are not authorized by State law, which controls.

XXXII

The provisions of said Irrigation District Federal Cooperation Law (State Water Code, Section 23197) authoriz-

to the District and its landowners the assurances required of the United States in its trustee relationship toward project beneficiaries with regard to the rights of the District and its landowners to a permanent supply of project water appurtenant to the land irrigated.

Invalidity Under State and Federal Law

XXXVII

That said contract with respect to the provisions thereof having to do with the delivery of water by the United States to the plaintiff District from the Central Valley [fol. 537] Project is invalid and void and is contrary to the Federal reclamation laws and to the laws of the State of California, among other things, in the particulars recited, found and set forth in the Findings herein, particular reference being here made to paragraphs VI, VII, VIII, IX, X, XVII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVII, XXX, XXXI, XXXII, XXXIII, XXXIX, XL, XLI, XLII, XLIII and XLIV.

Invalidity Under State and Federal Constitutions

XXXVIII

If the contract of May 14, 1951, could be held to be permitted or required under State and Federal law, or either, such law, for the reasons and in the particulars set forth in Conclusions XXVIII, A-H, inclusive, XXIX, A-D, inclusive, XXX, XXXI, XXXIV, XXXV, A-D, inclusive, XXXVI, XXXVII, and XXXVIII, above, would be and is unconstitutional, and would be and is also unconstitutional in its application to the Madera Irrigation District and to the answering defendant landowners and other landowners therein similarly situated and to all landowners of land in the District and in said 19,500 acres so excluded from said District, in denying them and each of them the equal protection of the laws and due process of law under Article I, Sections, 1, 13 and 14 of the California Constitution, and the Fifth Amendment and the Fourteenth Amendment, Sec-

tion 1, of the United States Constitution. This conclusion [fol. 538] independently follows under either of said Constitutions and under each such provision thereof.

XXXIX

If the contract of May 14, 1951, could be held to be permitted or required under Federal law, such law, for the reasons and in the particulars heretofore set forth in these Conclusions, would be and is unconstitutional, and would be and is also unconstitutional in its application to the Madera Irrigation District and to the landowner defendants and other landowners therein similarly situated, and to all landowners of land in the District and the said 19,500 acres excluded from said District, under the United States Constitution, and in particular the Tenth Amendment thereto.

Contract Inseparable

XL

Part A of the contract, including the provisions limiting the term thereof to 40 years, is inseparable from Part B thereof, providing for a major and permanent investment by the District in connection with the construction of a distribution system by the United States within the District for the distribution of project water to lands within the District, and the invalid provisions of the contract materially affect and are inseparable from other provisions of the contract.

XLI

A validation of the contract would render the status and [fol. 539] relationship of the parties toward each other, respecting water to be furnished by said project, confused and uncertain and would be prejudicial to the material rights and interests of the District and its landowners in and to the subject matter of the contract both during the term of the contract and upon its termination.

XLII

It is and would be unlawful and would cause irreparable harm and damage to plaintiff District and landowners therein for the plaintiff District, its board of directors, or the officers, agents, servants or employees of said District, or any of them, directly or in collaboration with others, to cause or permit the incurring of any obligation or liability upon the part of the plaintiff District or the landowners therein in connection with the foregoing contract or any part thereof, or to cause or permit any work of construction to be done in or upon said proposed distribution system, either under said contract or in such manner as to incur any liability upon the part of said District or the landowners therein, and any such acts or conduct hereinafter declared to be unlawful should be enjoined. The delivery of water by the United States to the plaintiff District at charges not to exceed $3.50 per acre foot for class one water and $1.50 per acre foot for class two water and the collection of funds therefor and payment for the costs thereof by the plaintiff District to the United States should not be enjoined.

[fol. 540] *Contract: Conclusion*

XLIII

For the foregoing reasons it is concluded that the contract of May 14, 1951, between the Madera Irrigation District and the United States of America, acting by the Bureau of Reclamation, is invalid and unenforceable and it should be so ordered, adjudged and decreed.

XLIV

The State Engineer is authorized and obligated to proceed diligently with the issuance of permits upon the applications now held by the United States for the benefit of the Central Valley Project, incorporating therein such terms and conditions as may be validly imposed within his discretion under the laws of the State of California. In the circumstances of this case, the failure of the United States to secure such permits has not, and may not be deemed to

have, impaired the vested rights acquired by the Madera Irrigation District and the landowners therein, including the answering landowner defendants, to the continued use of the project waters. Pending the issuance of permits, limited by such terms and conditions as the State Engineer may lawfully impose, said District and its landowners may continue of right vested in character to receive and put to beneficial use such project waters.

Injunction

XLV

[fol. 541] There should be entered a permanent injunction, enjoining the Madera Irrigation District, its officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of the Injunction by personal service or otherwise, from performing or taking any action to perform in behalf of the District the purported contract of May f4, 1951, and from failing or refusing to supply said landowner defendants appearing herein, with water for irrigation purposes, with respect to all of their land within said District, upon the same terms and conditions tendered to all other landowners within the District, without discrimination on the basis of the extend (sic) of their holdings of land within the District or any other basis; and affirmatively requiring said District to deliver water to said landowner defendants appearing herein without any such discrimination.

Let judgment be entered accordingly.

Dated: September 15th, 1953.

Benjamin C. Jones, Judge of the Superior Court, assigned.

I hereby certify that I have corrected and signed the foregoing proposed Findings of Fact and Conclusions of Law as of this date, viz: September 15, 1953.

Benjamin C. Jones, Judge of the Superior Court, Assigned.

[fol. 556] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF MADERA

No. 8502

MADERA IRRIGATION DISTRICT, Plaintiff

v.

ALL PERSONS having or claiming to have any interest in the Contract entered into on the 14th day of May, 1951 between MADERA IRRIGATION DISTRICT and the UNITED STATES, providing for a water supply for the Madera Irrigation District from the Friant Dam, and the construction of a distribution system in said District to the United States, Defendants.

JUDGMENT—February 1, 1954

In the above entitled matter, appearances having been made and issues having been joined, and the cause having been duly tried and fully argued both orally and in writing, and the matter submitted to the Court, and the Court having directed that Findings of Fact and Conclusions of Law be drawn, and proposed Findings of Fact and Conclusions of Law having been prepared and served, and objections to said proposed Findings of Fact and Conclusions of Law having been set down for hearing, and the matter of settlement having been extensively argued, and the Court having settled said Findings of Fact and Conclusions of Law, and the same having heretofore in writing been duly [fol. 557] made, signed and filed herein,

Now, therefore, and upon, and in accordance with the law and the facts found in the case by the Court, and the conclusions reached by the Court, it is hereby Ordered, Adjudged and Decreed as follows:

I

That the contract between the plaintiff District and the United States attached to the complaint herein and

designated as "Exhibit A", dated the 14th day of May, 1951, and the election proceedings and the election held in connection therewith are illegal, void and without force or effect.

II

That non riparian and unappropriated water within the State of California is the property of the People of the State of California, but the right to the use of this water may be acquired by appropriation in the manner provided by the laws of the State of California. That the general welfare of this State requires the conservation of and putting to beneficial use the water resources of the State. That there is vested in the State the power to determine the use to which such unappropriated water may be applied, and permits and licenses for the appropriation of such water may be conditioned in keeping with the use to which it is to be applied. Under the Constitution of the United States and in particular the Tenth Amendment thereto, no federal enactment, rule or regulation may override or abolish the provisions or requirements of the Con- [fol. 558] stitution or the laws of the State of California in relation to the appropriation and use of waters within the State. In enacting the Federal Reclamation Act of 1902, Section 8 thereof, and in other legislation, the Congress of the United States has expressly recognized that the use of water in California is regulated by the laws of this State.

III

The United States is not the owner of the water supplied and to be supplied from the Central Valley Project to the lands within the plaintiff District. The interest of the United States in such water is limited in all respects by the law of this State to its function as the storer and the carrier of the water to be delivered from Friant Dam as a part of the Central Valley Project of California. (The word "law" being herein used to include, unless otherwise indicated, the Constitution, statutes, rules and regulations, and court and administrative decisions of this State.) The United States, to the extent that such water may be avail-

able, is obligated to deliver it to the lands that now are, and were, within the Madera Irrigation District in 1939, including the lands now within said District and 19,500 acres since excluded from said District, which are more particularly referred to and described in the Findings of Fact. This said obligation, among other sources, stems from the appropriative rights of said District and the landowners therein; from the appropriations made by the predecessors in interest of the Medera Irrigation District, [fol. 559] and the Madera Irrigation District, for said lands; and from the appropriations made by and through the Director of Finance of the State of California for all of said lands. The United States is obligated to acquire from the State of California through the office of State Engineer, permits and licenses for the use of water for said purposes and the use which the United States may make of such water is limited by the conditions which the said State Engineer may lawfully and reasonably impose under State law relating to such appropriations of said water. That this judgment is not intended to, and does not in anywise interfere with, restrict, or limit the lawful discretion of the State Engineer in acting upon all such applications and the issuance of permits and licenses pursuant thereto and in conditioning the same in the interest of the people of this State.

IV

The Madera Irrigation District is a lawfully organized and existing irrigation district organized and existing under the laws of the State of California with the capacity to contract with the Federal Government, but only to the extent permitted by State Law. That no such contract is valid to the extent that it is inconsistent with the law of this State or in conflict therewith.

V

That the notice of election published by the Madera Irrigation District for the election to be held on the 9th day [fol. 560] of May, 1951, was and is invalid, illegal and of no force and effect and that the election purportedly held on the 9th day of May, 1951, was improperly and illegally

called and held in that, among other things, said notice did not designate or set forth the maximum amount of money to be paid by said District to the United States and, in particular, did not set forth or specify or indicate the properties of the District which were to be conveyed by the District to the United States, which such properties included a portion, if not all, of that certain irrigation system within said District known as the "Emmert System". That no approval of the purported contract marked "Exhibit A" could have resulted, or did result, from this said purported election. That said election was not duly or regularly held as provided by law and was not noticed as required by law. That the publication by the Board of Directors of said District of false and misleading statements concerning the provisions of said contract as set out in the Findings of Fact constituted a fraud, and the true results of said election cannot be ascertained.

VI

That the water rights, real property and other properties and in particular the land, ground and site upon which Friant Dam is now built, together with a gravel pit and supply of gravel and material for construction of said Dam, together with rights of way and easements and water rights and filings upon waters of the San Joaquin [fol. 561] River, as more particularly set forth and described in that contract dated the 24th day of May, 1939, and in the Findings particularly found upon, were acquired and held by the Board of Directors of Madera Irrigation District in trust for all of the landowners within the boundaries of said District as said boundaries were then constituted; that said boundaries then contained all lands of the answering defendants herein.

VII

That any right, title or interest which the United States acquired under and by virtue of the said contract dated the 24th day of May, 1939, in and to said properties and water and water rights was and is held in trust by the United States for the benefit of all landowners within the

Madera Irrigation District and the owners of the 19,500 acres excluded from said District, including these answering defendants and their predecessors in interest.

VIII

That the contract dated the 24th day of May, 1939, between Madera Irrigation District and the United States is a valid and existing agreement, subject to the trusts and limitations herein referred to and adjudged to exist.

IX

That the right to receive a water supply pursuant to the contract dated the 24th day of May, 1939, was held by Madera Irrigation District as trustee for the use and benefit of all of the landowners within the District, together with [fol. 562] the landowners of the 19,500 acres of land since excluded from said District; that all of the landowners within the Madera Irrigation District, together with the landowners of the said 19,500 acres of land, and including all of these answering defendants were and are the beneficiaries of said trust. That the purported transfer by Madera Irrigation District to the United States, in the document dated the 14th day of May, 1951, and before this Court for validation, of the pro rata share of the right to receive a water supply pursuant to said 1939 contract for the 19,500 acres to the United States constitutes taking of property without due process of law and without just compensation.

X

Prior to the execution of the contract dated the 24th day of May, 1939, and at all times subsequent thereto, Madera Irrigation District held as trustee for all of the landowners within the boundaries of said District, including the landowners of the said 19,500 acres excluded from said District, a vested right to a permanent supply of water from the San Joaquin River and other sources, appurtenant to all of the lands then in said District, subject to and in accordance with the laws of the State of California, by reason of applications to appropriate unappropriated water

from said river and other sources duly filed by the said District or its predecessors, with the State Engineer, Division of Water Resources of the State of California; that the purported substitution by the contract marked [fol. 563] Exhibit "A", dated the 14th day of May, 1951, now before the Court for validation, of a temporary right to receive project water from the United States in accordance with the terms of said contract marked Exhibit "A", in lieu of said appropriative rights to a permanent water supply, initiated by said District, in accordance with State law, constitutes a deprivation of property to the landowners within Madera Irrigation District and the landowners of the said 19,500 acres of land excluded from Madera Irrigation District to the use of said waters by reason of the limitations imposed upon them by Articles 28, 29 and 30 of the contract without due process of law and without just compensation therefor and is a breach of the recited trusts.

XI

That it was agreed between the United States and plaintiff Madera Irrigation District, by the contract dated the 24th day of May, 1939, that the owners of all of the lands within the boundaries of the plaintiff Madera Irrigation District, including the 19,500 acres excluded from the boundaries of the District were and are permanently entitled to delivery by the United States of the quantities of water set forth in this contract; that said contract right is binding upon the United States subject only to the assignment of a portion of said quantity of water to the Chowchilla Water District pursuant to the agreement dated the 24th day of August, 1949, accepted and approved by the Secretary of Interior of the United States on the 16th [fol. 564] day of September, 1949, that the owners of said lands were, and are, entitled to the delivery of such quantities of water without any of the restrictions or conditions set forth in Articles 28, 29 and 30 of the alleged contract before the Court; that said contract right to receive said water is a continuing right to a permanent delivery of water from the project to all lands in said District, appurtenant to the lands irrigated, subject to and in ac-

cordance with the laws of the State of California; that the United States is entitled to payment therefor at the rate of not to exceed $3.50 per acre foot for Class 1 water and $1.50 per acre foot for Class 2 water, which waters are defined in said contract dated the 24th day of May, 1939; that said Madera Irrigation District and the landowners, and each of them, are entitled to a credit to the extent of such payments by the United States toward the discharge of the District's share of the construction costs of the Central Valley Project as more particularly hereinbefore and hereinafter set forth.

XII

In order for the United States to carry out the purposes of the Central Valley Project, particularly the delivery of water therefrom to project beneficiaries, including plaintiff District and its landowners, it became desirable and expedient that the State of California assign in trust to the United States for the uses and purposes of the Central Valley Project applications to appropriate unappropriated [fol. 565] water and the water rights referred to in Findings XII, XVII, XXV, XXVI, and XXVII and also to acquire other applications and the appropriative and other rights to water referred to in Findings VI and VII and to perfect all such applications by securing permits pursuant to the laws of the State of California, for the use of all such water by said project beneficiaries, including the plaintiff District and the landowners therein and the landowners of the 19,500 acres now excluded from the District. All rights to the use of water heretofore acquired by the United States for the purposes of the Central Valley Project, as well as all rights to the use of water in process of acquisition and to be acquired for such purposes, are held by it in trust for the beneficiaries of said project, including the plaintiff District and its landowners, and the landowners of the 19,500 acres more recently excluded from the District, all of whom have a present and vested right to the faithful fulfillment and execution of said trust. That for the last several years, water has been delivered through the Central Valley Project by the United States Bureau of Reclamation to the plaintiff District and its landowners for the ir-

rigation of lands within the District; and subject to the laws of the State of California and the discretionary powers of the State Engineer in issuing permits and licenses, said District and its landowners, and the landowners in said 19,500 acres excluded from said District, have acquired vested and existing property rights to a permanent supply of project water, which said rights are [fol. 566] now vested in said landowners as appurtenances to their land, subject only to those reasonable conditions imposed by State Law, and to a defeasance upon failure of use; that by the transfer to the United States by the District of the rights of the District to appropriate water pursuant to its applications which had theretofore been filed with the State Engineer of the State of California, the owners of land within the 19,500 acres excluded from the District, and the District on behalf of its landowners, have acquired and now possess additional vested property rights to a permanent supply of project water in addition to those originating in the filings made by the Director of Finance of the State of California.

XIII

Any and all rights to the use of water acquired or to be acquired by the United States for purposes of said project are held in trust and dedicated to carrying out the purposes and objects of said project, including the delivery of said water to plaintiff District and its landowners, and the landowners of the 19,500 acres excluded from said District; and such water is required to be delivered to such lands for use thereon and as appurtenant to the lands irrigated thereby, subject only to conditions lawfully imposed in accordance with the law of this State, and under the burden of repayment to the United States of the reasonable charges for storing and transporting such appropriated water.

[fol. 567]

XIV

Permits issued to the United States pursuant to the applications to appropriate unappropriated waters for the Central Valley Project vest in the United States rights as trustee only, with the beneficial title to such waters in the

landowners within the service area of the project. The owners of any and all lands within the Madera Irrigation District, and of the 19,500 acres excluded, are entitled to equal rights to receive water from such project without discrimination and to apply such water upon their lands, subject only to lawfully imposed conditions in accordance with State law, and the payment of charges sufficient to return to the United States its due proportion of the reimbursable and returnable costs of the project.

XV

The Secretary of Interior in constructing, operating and maintaining the Central Valley Project has at all times been, and now is, under mandate from the Congress of the United States to proceed in accordance with the laws of the State of California in acquiring rights to the use of water for purposes of said project and to hold and retain such applications, rights and interests not for its own use and benefit but for the use and benefit of the beneficiaries of the Central Valley Project, including the plaintiff District and the landowners therein, and the landowners of said 19,500 acres excluded from said District. The right, [fol. 568] title and interest, and ownership of all rights, to the use of water acquired or to be acquired by the United States for the purposes of said project, immediately upon the acquisition of such rights, gave, and do give, rise to a resulting trust, with the State of California, as the trustor, the United States, acting through the Secretary of the Interior and the United States Bureau of Reclamation, as trustee, and the landowners contemplated to be served with water by means of the project as the beneficiaries of such trust; and the United States as trustee for all project beneficiaries has the duty and obligation, which it has failed yet to perform, to perfect its applications to appropriate water in accordance with the law of this State.

XVI

The operation of the Central Valley Project as authorized, done and maintained by the United States is a Federal assistance program, and the Secretary of the

Interior in expending Federal funds for the construction, operation and maintenance of the project, has so done, and is doing so, subject to ultimate appropriate repayment by the State, or local Districts and agencies thereof, of the reimbursable costs of the project in accordance with the Federal Reclamation laws.

XVII

The United States has the right, duty and obligation to recover, in accordance with the Federal Reclamation laws, that portion of the reimbursable project construction costs allocated to irrigation and assigned for repayment by the [fol. 569] water users; and the District and all landowners therein, including the defendant landowners herein appearing, are obligated to pay for a proportionate share of the cost of delivery of project water, and a proportionate share of the project construction costs, and in the payments made for such purposes are entitled to credit for that portion of payments which should appropriately be applied to the repayment of project construction costs.

XVIII

The District and its landowners upon the repayment of a proportionate share of the project construction costs are entitled, subject to compliance with State law, including such reasonable conditions as may be imposed by the State Engineer in permits and licenses to use the water, to the continued delivery of project water by the United States as a right appurtenant to all of the district lands at such rates only as may be required to cover the District's proportionate share of the costs of operation and maintenance.

XIX

The directors of the District in the management of the affairs thereof, and in the delivery of water made available by the project to the landowners therein, are governed solely by the laws of the State of California relating to irrigation districts.

XX

The District is an organization created and governed by [fol. 570] and for the electors thereof and bears a trust relationship to the landowners therein and in carrying out such trust is obligated by the law of this State relating to irrigation districts, to deliver the water received by it from said Central Valley Project to each parcel of land within the District regardless of the size thereof, in the proportion that District assessment on each parcel bears to the entire District assessment on all lands within the District.

XXI

In dealing with irrigation districts and other users of project water for irrigation, the Legislature of this State may not, consistent with the California Constitution, and particularly Article IV thereof, delegate to Congress the power to legislate relative to the use of such water in contravention of the law of California, nor authorize the Secretary of the Interior to enforce regulations of the Department of Interior relative to the use of project water in contravention of the laws of this State.

XXII

Subject to the rights of the State of California and the Water Project Authority of the State of California, as recited and found in paragraphs XIII and XVII of the Findings herein, the United States and the plaintiff District may lawfully enter into a contract for the delivery of water and repayment by the District to the United States of that portion of said project costs properly allocated to [fol. 571] irrigation and assigned for repayment by the water users, and found by the Secretary of the Interior to be within the ability of the water users to repay, and providing for an annual charge by the United States to the plaintiff District, including construction charges, and operation, maintenance and overhead charges, allowing credit for the payments made by the District upon such charges and providing that when such charges have been paid in full no further construction charges shall be collectible from the plaintiff District or the landowners therein.

XXIII

The United States may not, by virtue of its physical possession of the dams, reservoirs and main canals constituting the major works of said Central Valley Project, or by virtue of the possession of any other works necessary or useful in the delivery of stored waters of the Central Valley Project, withhold, waste, or otherwise prevent the application to beneficial use of Central Valley Project waters, but is obligated to conform to the laws of the State of California relative to the control, appropriation, use and distribution of the waters of the Central Valley Project, and in that connection is required to permit such water to be put to beneficial use in accordance with the laws of this State and to recognize any and all vested rights therein. In delivering Central Valley Project water, the United States is subject to the authority of the State Engineer of the State of California as the executive officer [fol. 572] of the Division of Water Resources of the Department of Public Works of the State of California as prescribed by the laws of this State in respect to the acquisition of rights to the use of water by appropriation and respecting the use of such water. Any and all rights to the use of water acquired or to be acquired, by the United States for purposes of the Central Valley Project are dedicated to carrying out the purposes and objects of the project, including the delivery of water to plaintiff District and its landowners and the landowners of said 19,500 acres so excluded from said District. The water delivered, and required to be delivered, to such lands is under a right appurtenant to the lands upon which it is used, subject only to conditions lawfully imposed in accordance with State law, and to defeasance upon lack of use; but subject further, however, to the payment to the United States of the reasonable and appropriate charges in repayment of its reasonable and necessary construction, operation, maintenance and replacement costs.

XXIV

The plaintiff District and the landowners therein are entitled, subject to the rights and interests of the State

of California and its agencies, including the exercise of the lawful discretion of the State Engineer, to a contract for the delivery of water by the United States to all lands within the plaintiff District, which contract shall recognize and provide for a permanent and appurtenant water right, [fol. 573] conditioned, among such other reasonable requirements as may be imposed, upon continued beneficial use, and additionally subject to a fixed maximum charge to be paid by the plaintiff District for the plaintiff's share of the construction costs of the major works of the Central Valley Project used or useful in the delivering of water to the plaintiff. (sic) District, as such costs have been allocated to irrigation and in part assigned for repayment by the water users within their ability to repay the same, and in which contract a credit to the District upon such costs and a manner and method of accounting for such credit is provided for.

XXV

It is adjudged to have been determined by the Secretary of the Interior, that to the extent that water may be available to the United States for such purposes, the plaintiff District and its landowners subject to the discretionary powers of the State Engineer in issuing permits and licenses to appropriate waters as herein found and concluded, are entitled each year, under an appropriate contract, to not less than the quantities of Class 1 and Class 2 water as specified in Part A of the purported contract; and that the charges specified in Part A of the purported contract contain a component for the return by plaintiff District of some part of its proportionate share of project construction costs; and that such charges, pursuant to an appropriate contract, are reasonable and within the ability of plaintiff District and its landowners to pay and are ade- [fol. 574] quate to repay to the United States, each year, an appropriate share of the necessary construction, operation and maintenance costs.

XXVI

The following provisions of said contract of May 14, 1951, are invalid, void and without force or effect:

A. Article 20 of the contract, purporting to condition the delivery of water upon the payment of void assessments.

B. Article 22 of the contract, purporting to impose a a (sic) penalty unknown to California law with respect to land which is in default in payments to the District although the District is not in default in its payments to the United States.

C. Article 6(c) of the contract, purporting to forbid the District from disposing of surplus water outside the District.

D. Article 9(c) of the contract, purporting to reserve to the United States the right to all waste, seepage and return flow which escapes or is discharged beyond the District's boundaries.

E. Article 11 of the contract, purporting to forbid the District from delivering or furnishing any water required under the contract for other than agricultural purposes.

F. Article 26 of the contract, purporting to forbid the District from making any change in its boundaries, such as by the inclusion or exclusion of lands.

G. Articles 28, 29 and 30 of the contract, purporting to forbid the District from furnishing water made available [fol. 575] under the contract to any lands in excess of 160 acres, held by any single beneficial owner, unless the owner complies with certain further requirements, including the sale of all land in excess of said 160 acres at prices not in excess of those approved by the United States Secretary of the Interior.

H. Articles 19 and 21 of the contract, purporting to hold all lands within the District subject to an *ad valorem* tax to defray the charges imposed upon the District by the contract, notwithstanding the provisions of Articles 28, 29 and 30 of the contract, above mentioned, prohibiting the furnishing of water to land in excess of said 160 acres.

XXVII

The contract of May 14, 1951, is invalid under State law, including the State Constitution, Article XIV, Section 3, for the following reasons:

A. Neither the contract, nor the notice of election which preceded it, contains or contained any statement of the maximum amount of money to be payable to the United States for construction purposes and cost of water supply and acquisition of property; nor any provision for the crediting of the payments to be made under such contract to the cost of the project.

B. The contract does not provide for or recognize a water right appurtenant to the lands within the District; the contract contemplates and permits a continuing power in the Federal Government to furnish or withhold water at the end of the contract period upon such terms and condi- [fol. 576] tions as the United States may then impose.

C. The contract is contrary to State law in that it purports to deprive the lands within the District, and particularly the lands of the landowner Defendants and those similarly situated, of present existing and vested water rights existing under and by virtue of the laws and the Constitution of this State.

XXVIII

The contract of May 14, 1951, is invalid and unenforceable because the numerous provisions, purporting to vest an uncontrolled discretion in the Secretary of the Interior, are so ambiguous, indefinite, uncertain and lacking in mutuality as to obviate any basis of contractual undertaking recognized by the laws of California.

XXIX

The provisions of said Irrigation District Federal Cooperation Law (State Water Code, Section 23197) authorizing the inclusion of a contractual provision for the delivery and distribution of water under Acts of Congress and the rules and regulations established thereunder, au-

thorizes such delivery and distribution only under such acts, rules and regulations as are consistent with the laws of this State. The contract imposes conditions on the delivery and distribution of water which are inconsistent with State Law, the Constitution of the State of California, the Constitution of the United States, and the Reclamation Act of 1902.

[fol. 577]

XXX

The contract of May 14, 1951, is invalid in that it provides that the Secretary of the Interior, pursuant to rule and regulation, may in relation thereto apply numerous unrepealed provisions of the Act of Congress of June 17, 1902, and acts amendatory thereof or supplementary thereto, all collectively styled the Federal reclamation laws, and generally referred to in the contract as the basis thereof; that the application to the contract of many of such provisions would adversely and materially affect the contract and the rights of the District and the landowners thereunder, in violation of the laws of the State of California.

XXXI

The contract is in violation of Federal law in the following particulars:

A. Part A of the contract purports to be a utility contract for the sale of project water to persons in whom the right to the use of such water is already vested.

B. The contract does not state the total or any amount to be repaid by the District and its landowners of that portion of the reimbursable costs of the profit allocated to irrigation and assigned for repayment by the water users; and fails to provide credit for any part of the annual rates for water to the repayment of the District's obligation for project construction costs.

C. The contract destroys the right of the District and [fol. 578] its landowners to acquire the right to a permanent delivery of project water appurtenant to the land irrigated, the intendments of the contract being that at the end of 40 years no project water will be delivered to

the District except in the discretion of the Secretary of the Interior.

D. The provisions of Sections 28, 29 and 30 of the contract relating to excess lands are in violation of Section 8 of the Reclamation Act of June 17, 1902, in that such limitations on the acreage to which water may be delivered is in violation of the laws of the State of California.

XXXII

The contract by its terms and provisions is unenforceable for the reason that it is indefinite, uncertain, misleading and lacking in mutuality regarding the relationship of the parties toward each other with respect to project water and the relative rights and duties of the respective parties in connection therewith, and for the reason that it denies to the District and its landowners the assurances required of the United States in its trustee relationship toward project beneficiaries with regard to the rights of the District and its landowners to a permanent supply of project water appurtenant to the land irrigated.

XXXIII

Part A of the contract, including the provisions limiting the term thereof to 40 years, is inseparable from Part B thereof, providing for a major and permanent investment [fol. 579] by the District in connection with the construction of a distribution system by the United States within the District for the distribution of project water to lands within the District, and the invalid provisions of the contract materially affect and are inseparable from other provisions of the contract.

XXXIV

In the circumstances of this case, the failure of the United States to secure permits from the State for the use of project water has not, and may not be deemed to have, impaired the vested rights acquired by the Madera Irrigation District and the landowners therein, including the answering landowner defendants, to the continued use of

the project waters. Pending the issuance of proper permits, the said District and its landowners may continue to receive and put to beneficial use project waters in the exercise of their vested rights therein.

XXXV

That plaintiff District, its directors, officers, agents, servants, employees, attorneys and those persons in active concert or participation with them, or any of them, who receive actual notice of this judgment by personal service or otherwise be and they are hereby permanently enjoined from performing or taking any action to perform in behalf of said District the said contract or any part thereof and they are further enjoined from causing or permitting any work of construction to be done in or upon said [fol. 580] proposed distribution system, under said contract, in such manner as to incur any liability upon the part of said District or the landowners therein.

XXXVI

That the plaintiff District, its directors, officers, agents, servants, employees, attorneys and those persons in active concert or participation with them, or any of them, who receive actual notice of this judgment by personal service or otherwise be and they are hereby permanently enjoined from failing or refusing to supply the landowner defendants with water for irrigation purposes, with respect to all of their land within said District, upon the same terms and conditions tendered to all other landowners within the District, without discrimination by reason of the extent of their holdings of land, or on any other basis inconsistent with the findings of fact and this judgment made, signed, filed and entered herein.

XXXVII

The delivery of water by United States to the plaintiff District at charges not to exceed $3.50 per acre foot for Class 1 water and $1.50 per acre foot for Class 2 water, and the collection of funds therefor, and the payment for

the costs thereof by plaintiff District to the United States is not enjoined.

XXXVIII

Defendants appearing herein are entitled to their costs of suit.

[fol. 581] Dated: February 1st, 1954.

Benjamin C. Jones, Judge of the Superior Court, Assigned.

[File endorsement omitted]

[fol. 614] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Sac. No. 6489

THE MADERA IRRIGATION DISTRICT, Plaintiff and Appellant,

vs.

ALL PARTIES and PERSONS, ETC., Respondents,

THE STATE OF CALIFORNIA, ET AL., Defendant and Appellant.

NOTICE OF APPEAL BY THE MADERA IRRIGATION DISTRICT AND THE STATE OF CALIFORNIA TO THE SUPREME COURT OF THE UNITED STATES—March 11, 1957

I

Notice is hereby given that the Madera Irrigation District and the State of California, the appellants above named, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of California affirming the judgment of the Superior Court in and for the County of Madera, State of California, which declared invalid that certain contract between the Madera Irrigation District and the United States dated May 14, 1951. The opinion of the Supreme

Court of the State of California was filed on January 24, 1957; rehearing was denied by that Court on February 19, 1957.

This appeal is taken pursuant to 28 U.S.C.A. section [fol. 615] 1257(1).

II

The Clerk of the Supreme Court of the State of California will please prepare a transcript of the record in this proceeding for transmission to the Clerk of the Supreme Court of the United States. He shall include in said transcript the following:

1. The record consisting of Clerks Trans.—2 vols., Reporters Trans.—2 vols., Supp. Reporters—1 vol., heretofore filed with the Supreme Court of the State of California on the appeal to said Court.
2. The opinion by the California Supreme Court in this proceeding and in the case of *Ivanhoe Irrigation District* v. *All Parties*, L.A. No. 23043, both filed January 24, 1957.
3. The petitions to the California Supreme Court by the Madera Irrigation District and the State of California for a rehearing, the answers thereto, all the *amicus curiae* briefs filed in support thereof or opposition thereto, and the answers to such *amicus curiae* briefs.
4. The order of the California Supreme Court of February 19, 1957, denying a rehearing.
5. This Notice of Appeal.

III

The questions presented by this appeal all relate to the validity of the previously identified contract between the [fol. 616] United States and the Madera Irrigation District, an agency of the State of California, providing for delivery of a water supply to the District from the federal Central Valley Project, and the expenditure and repay-

ment of funds for construction of a distribution system by the United States to distribute this water supply within the District.

These questions are as follows:

1. Section 46 of the *Omnibus Adjustment Act of 1926* (44 Stat. 649 (1926), 43 U.S.C. section 423e (1952)) precludes delivery of water from federal reclamation projects to land held in private ownership by any one owner in excess of 160 irrigable acres unless certain conditions are met.

   (a) Does this section apply only to public lands of the United States or does it also apply to lands in private ownership?

   (b) Is this section valid or does it deprive owners of more than 160 acres of land in federal reclamation projects in California of property without due process of law, and does it deny them equal protection of the laws?

   (c) The California *Irrigation District Federal Cooperation Law* (Calif. Water Code sections 23175 *et seq.*) provides for the delivery and distribu-[fol. 617] tion of water acquired under any contract with the United States "under the relevant acts of Congress" (*id.* section 23197(a)), and "in accordance with the applicable acts of Congress" (*id.* section 23200). Is this section 46 one of the "relevant" and "applicable" acts of Congress referred to in the California *Irrigation District Federal Cooperation Law?*

   (d) Does the application of this section 46 depend in any way on whether "the title to the water to be purveyed is [or is] not an unlimited title in the United States?"

   (e) Does section 8 of the *Reclamation Act of 1902* (32 Stats. 390 (1902), 43 U.S.C. sections 372, 383) require the United States to deliver water in accordance with a trust under state law, assuming such trust would prevent the imposition of the limitation in this section 46?

2. Does the validity of the contract involve consideration of the water rights of anyone and particularly of the United States?

3. Is the United States a party to this proceeding?

4. If the United States is not a party, did the courts of [fol. 618] California have jurisdiction to determine:

   a. What water rights or title the United States has acquired?

   b. What sort of water rights the United States could acquire in California, whether from the State of California or from others?

5. Can a trust imposed on water rights pursuant to State law prevent the United States from acquiring the water rights it needs to accomplish a federal purpose?

6. Are the rights of the beneficiaries under the trust declared to exist by the California Supreme Court property rights within the meaning of the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution?

7. Assuming the rights referred to in paragraph 8 are property rights within the meaning of the United States Constitution, does the 160 acre water limitation in section 46 of the *Omnibus Adjustment Act of 1926* deprive the owners thereof of those rights?

8. Does federal law provide that upon repayment the District must be granted title to "works for the storage and distribution of water to and by the district" [fol. 619] . . . "not dependent on a future and necessarily discretionary act of Congress?"

9. Does federal law require that the contract specify an obligation for construction of storage and delivery works (other than local distribution systems for the use of individual districts) to be repaid in 40 years?

10. Does section 8 of the *Reclamation Act of 1902* submit the United States to the provisions of State law regulating public utilities where Congress by section 9(e) of the *Reclamation Project Act of 1939* has provided a system of regulation for federal projects which may be inconsistent with the State system?

11. Section 9(e) of the *Reclamation Project Act of 1939* (53 Stat. 1196 (1939, 43 U.S.C. section 485h(e) 1952)) authorizes the Secretary of the Interior to enter into contracts to furnish water for irrigation purposes from federal reclamation projects. The term of such contracts is not to exceed forty years.

(a) Does this section authorize the United States at its discretion to discontinue water service at the end of the contract term?

[fol. 620] (b) If it does, does it impose upon landowners a burden "under which they may suffer the loss of water rights at the discretion of the United States" so that it is "contrary to well established constitutional principles and protections"?

Dated: March 11, 1957.

Edmund G. Brown, Attorney General of the State of California, B. Abbott Goldberg, Deputy Attorney General, Adolphus Moskovitz, Deputy Attorney General, 600 State Building, San Francisco 2, California, Attorneys for Defendant and Appellant, The State of California, By Adolphus Moskovitz.

David E. Peckinpah, Denver C. Peckinpah, 1229 N Street, Fresno, California, Attorneys for Plaintiff and Appellant, The Madera Irrigation District.

[fol. 621] Affidavit of service (omitted in printing).

[fol. 1]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF MADERA

No. 8497

PHILLIP ALBONICO and JANE E. ALBONICO, his wife, Petitioners,

v.

MADERA IRRIGATION DISTRICT, A Corporation, and JOHN M. ALLEN, C. A. RIDGEWAY, ALLEN T. ROBERTS, DEE V. ROMANS, JOHN A. FRANCHI, Directors of the Madera Irrigation District, Respondents.

PETITION FOR WRIT OF MANDATE—Filed May 14, 1951

Your petitioners above named respectfully apply for a Writ of Mandate by this their verified petition and in this behalf set forth the following facts and causes for the issuance of the Writ, namely:

I

That the Madera Irrigation District is an irrigation district organized and existing under and by virtue of the laws of the State of California pursuant to the California Irrigation District Act and acts amendatory thereof or supplementary thereto known as the Irrigation District Law, (Calif. Water Code, Div. 11) with its principal place of business at Madera, California.

II

That John M. Allen, C. A. Ridgeway, Allen T. Roberts, Dee V. Romans, John A. Franchi are the duly elected, [fol. 2] constituted and acting Board of Directors of the Madera Irrigation District.

III

That your petitioners are the owners in fee of the tract of land consisting of all of those pieces or parcels of land

lying in the County of Madera, State of California and more particularly described as follows, to wit:

All portions of the S½ of Lots 1 and 2 in the NW¼ and the N½ of Lots 1 and 2 in the SW¼, lying Southwest of the A.T. & S.F. R.R. R/w, in Section 18, T. 12 S, R. 19 E, containing 100 acres, more or less.

S½ of NE¼ of Section 13, T. 12 S., R. 18 E., M.D.B. & M., containing 80 acres, more or less.

W½ of SE¼ of Section 34, T. 11 S., R. 18 E., M.D.B. & M., containing 80 acres, more or less.

W½ of the SE¼ and the SE¼ of the SE¼ of Section 3, T. 12., S., R. 18 E., M.D.B. & M., containing 120 acres, more or less.

S½ of the SW¼ of Section 3, T. 12 S., R. 18 E. and the E½ of the SE¼ of the SE¼ of Section 4, T. 12 S., R. 18 E., M.D.B. & M., containing 100 acres, more or less.

NE¼ of Section 10, T. 12 S., R. 18 E. and the NW¼ of the NW¼ and the W½ of the SW¼ of the NW¼ of Section 11, T. 12 S., R. 18 E., M.D.B. & M., containing 220 acres, more or less.

N½ of the SW¼ and the SE¼ of the SW¼ of Section 11, T. 12 S., R. 18 E., M.D.B. & M., containing 120 acres, more or less.

NE¼ of Section 14, T. 12 S., R. 18 E., M.D.B. & M., containing 160 acres, more or less.

All that portion of the W½ of Section 14, T. 12 S., Range 18 E. M.D.B. & M., lying east of the S.P.R.R. R/W, containing 250 acres, more or less.

The N 30 acres of the NW¼ of the NW¼ of Section 13, T. 12 S., R. 18 E., M.D.B. & M., less 0.49 acres deeded to state.

[fol. 3] IV

That all of said lands above described lie within the boundaries of the Madera Irrigation District.

V

That on or about the 16th day of February, 1951, your petitioners, in the manner and form required by law, filed with the respondents their petition for the exclusion of said lands from the said Madera Irrigation District. That the 5th day of April, 1951, at the offices of the Madera Irrigation District in the City of Madera, County of Madera, State of California, was set as the time and place for the hearing of said petition and notice of this hearing was given in the manner required by law.

VI

The said petition came on regularly for hearing on the 5th day of April, 1951. The petitioner, Phillip Albonico, was present and represented by his counsel; the respondent Directors of the Madera Irrigation District were present together with their legal counsel and other representatives of the Madera Irrigation District; a record of the proceedings on the petition was made by a duly qualified reporter.

VII

That upon the hearing of the said petition, as aforesaid, evidence was introduced on behalf of the petitioners showing that, except as to 320 acres thereof the said lands of the petitioners sought to be excluded would not be benefited by the operations of the Madera Irrigation District. [fol. 4] Reference is hereby made to the record of said hearing.

VIII

That upon the hearing of the said petition, as aforesaid, no evidence was introduced in opposition to the petition either by the respondents or by any objectors to the petition; that no evidence was introduced at said hearing that the lands of the petitioners, except as to 320 acres thereof, would be benefited by the operations of the Madera Irrigation District.

IX

Thereafter at the Adjourned Regular Meeting of the Board of Directors of the Madera Irrigation District of Thursday, April 12, 1951, the Madera Irrigation District by Resolution #1885 of its Board of Directors entered its findings of fact that:

(1) The lands of the petitioners would be benefited by the operations of the Madera Irrigation District, and

(2) That it was not for the best interest of said irrigation district that said land be excluded; and entered its order that the said petition for exclusion be denied.

X

That except as to 320 acres thereof, there was no evidence before the Directors of the Madera Irrigation District to support the finding of fact that the lands of the petitioners would be benefited by the operations of the Madera Irrigation District.

XI

[fol. 5] That at the time of the hearing of said petition as heretofore set forth, and the making of the order that the said petition for exclusion be denied, the Respondent Madera Irrigation District had completed its negotiations with the United States of America for the terms of a contract for the purchase of irrigation water and the construction of a distribution system; that the Respondent Madera Irrigation District had presented the terms of said contract to, and obtained the approval of, the California Districts Securities Commission; that the Respondent Madera Irrigation District had thereafter given notice for the calling of an election in the Madera Irrigation District for the purpose of authorizing the Directors of the Madera Irrigation District to execute said contract with the United States of America; that the entire operations of said District in relation to the said lands of your petitioners will be pursuant to and in conformity with said contract; that at all of said times, said contract, by its terms and by the laws of the United States of America, prohibits the

delivery of water by the Madera Irrigation District to any one person owning more than 160 acres of land, or, as in the case of these petitioners, where the petitioners are married and the property is community property, prohibits the delivery of water by the Madera Irrigation District to more than 320 acres of the land of the petitioners; that as heretofore alleged, these petitioners are the owners of 1,259.51 acres of land, more or less, in the Madera Irrigation District; that subsequent thereto, to wit, on the [fol. 6] 9th day of May, 1951, an election was held in the Madera Irrigation District; that the petitioners are informed and ~~believe~~, and upon such information and belief allege, that at said election the Directors of the Madera Irrigation District were authorized to execute the said proposed contract, but that the result of said election will not be legally determined until the returns of said election are canvassed at 10:00 A.M., on the 14th day of May, 1951.

XII

That except as to 320 acres thereof, the lands of the petitioners described in this petition will not be benefited by the operations of the Madera Irrigation District.

XIII

That your petitioners have no plain, speedy, or adequate remedy in the course of the law in that there is no provision under the laws of the State of California for an appeal by the petitioners from the action of the respondents in denying said petition for exclusion.

XIV

That the said respondent Madera Irrigation District is about to enter into said contract with the United States of America for the purchase of irrigation water and the construction of a distribution system.

Wherefore, your petitioners pray:

1. That an Alternative Writ of Mandate issue out of and under the ~~seal~~ of your Honorable Court, directed to [fol. 7] the respondents above named, commanding said

respondents to vacate and set aside their resolution denying the exclusion of the aforesaid lands and, further, commanding them to approve the petition for the exclusion of the aforesaid lands except as to 320 acres thereof, or to show cause before this Court at a specified time and place why said respondents have not done so;

2. That upon said hearing to show cause a Writ issue out of and under the seal of your Honorable Court, directed to the respondents above named, commanding said respondents to vacate and set aside their resolution denying the exclusion of the aforesaid lands and further commanding them to approve the petition for the exclusion of the aforesaid lands except as to 320 acres thereof;

3. That the respondents be directed to produce at that time the record of the hearing before the Directors of the Madera Irrigation District on the petition for exclusion;

4. That the respondents be directed to produce at that time a copy of the proposed contract with the United States of America for the purchase of irrigation water and the construction of a distribution system;

5. And for such other and further relief to which petitioners may be entitled.

Phillip Albonico, One of Petitioners.
Green, Green, Plumley & Kuney, By Kenneth A. Kuney.

[fol. 11] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF MADERA

No. 8497

[Title omitted]

ALTERNATIVE WRIT OF MANDATE—May 14, 1951

The People of the State of California Send Greetings to the Madera Irrigation District, and John M. Allen, C. A. Ridgeway, Allen T. Roberts, Dee V. Romans, John A. Franchi, Directors of the Madera Irrigation District:

Whereas, it appears by the verified petition of Phillip Albonico and Jane E. Albonico, his wife, the parties beneficially interested herein that you, the said Madera Irrigation District and John M. Allen, C. A. Ridgeway, Allen T. Roberts, Dee V. Romans, John A. Franchi, the Directors of the Madera Irrigation District, refuse to exclude the lands of the petitioners from the Madera Irrigation District, which lands are set out and more particularly described in the petition herein, and it appearing from said petition that except as to 320 acres thereof the petitioners herein are entitled to have said lands excluded from the Madera Irrigation District, and it further appearing that an Alternative Writ of Mandate should issue herein and [fol. 12] that the petitioners have no plain, speedy, or adequate remedy in the course of the law;

Therefore, we do command you that immediately upon the receipt of this Writ you do vacate and set aside your resolution denying the petition for the exclusion of the said lands and further that you grant and approve the petition for the exclusion of the said lands except as to 320 acres thereof, or that you show cause before this Court at the courtroom thereof on the 23rd day of May, 1951, at 10:00 o'clock A.M. of said day why you have not done so, and produce at that time the record of the hearing on the petition for exclusion.

Let the within Writ issue.

Dated this 14th day of May, 1951.

Edward L. Kellas, Judge of the Superior Court.

Attest my hand and seal of said Court this 14th day of May, 1951.

Erma E. Chouvront, Clerk, By H. H. Dwyer, Deputy Clerk.

(Seal)

[fol. 18] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF MADERA

No. 8497

[Title omitted]

ANSWER TO PETITION—Filed May 25, 1951

Come now respondents above named and, answering the petition on file herein, admit, deny and allege as follows, to wit:

I

Deny generally and specifically, each and every allegation contained in Paragraph VII of said petition.

II

Deny generally and specifically, each and every allegation contained in Paragraph VIII of said petition, except that respondents admit that no evidence was introduced at the hearing by any objectors to the petition.

III

Deny generally and specifically, each and every allegation contained in Paragraph X of said petition.

IV

Answering the allegations contained in Paragraph XI of [fol. 19] said petition, respondents deny that the contract mentioned in said paragraph, by its terms or by the laws of the United States of America, or otherwise, or at all, prohibits the delivery of water by the Madera Irrigation District to any one person owning more than 160 acres of land, or prohibits the delivery of water by the Madera Irrigation District to more than three hundred twenty acres of the lands of petitioners.

V

Deny generally and specifically, each and every allegation contained in Paragraph XII of said petition.

Wherefore, respondents pray that said petition be denied and that respondents have judgment for their costs and disbursements.

David E. Peckinpah, Denver C. Peckinpah, Harold M. Child, L. N. Barber, By L. N. Barber, Attorneys for Respondents.

[fol. 22] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF MADERA

No. 8497

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—
January 28, 1952

This cause came regularly on for hearing on the 8th day of June, 1951, pursuant to an alternative writ of mandate heretofore granted petitioners herein, Green, Green, Plumley & Kuney, by Denslow Green and Kenneth A. Kuney, appearing as counsel for the petitioners, and David E. Peckinpah, Esq., and L. N. Barber, Esq., appearing as counsel for the respondents, whereupon evidence was introduced on behalf of the petitioners and the matter ordered submitted upon briefs, and the briefs having been filed by counsel, and the cause thereupon submitted to the Court for its consideration and decision, and the Court being advised in the premises, hereby makes and files its Findings of Fact and Conclusions of Law constituting its decision in said action, as follows, to wit:

FINDINGS OF FACT

I

[fol. 23] That all of the allegations contained in paragraphs I, II, III, IV, V, and VI, of petitioners' Petition for Writ of Mandate, on file herein, are true.

II

That it is true that upon the hearing of said Petition as aforesaid, evidence was introduced on behalf of petitioners showing that if Sections 28, 29, and 30, of the Contract between the United States and the Madera Irrigation District for Water Service and Construction of a Distribution System (petitioners' Exhibit 4, herein) are valid and in force and effect, that, except as to 320 acres thereof, the said lands of the petitioners sought to be excluded would not be benefited by the operations of the Madera Irrigation District.

III

That it is true that upon the hearing of the said Petition, as aforesaid, no evidence was introduced in opposition to the Petition by any objectors to the Petition; that it is true that if Sections 28, 29, and 30 of the Contract between the United States and the Madera Irrigation District for Water Service and Construction of a Distribution System (petitioners' Exhibit 4, herein), are valid and in force and effect, that no evidence was introduced at said hearing that the lands of petitioners, except as to 320 acres thereof, would be benefited by the operations of the Madera Irrigation District.

IV

That the allegations contained in paragraph IX of peti- [fol. 24] tioners' Petition for Writ of Mandate, on file herein, are true.

V

That it is true that if Sections 28, 29, and 30, of the Contract between the United States and the Madera Irrigation District for Water Service and Construction of a Distribution System (petitioners' Exhibit 4, herein) are valid and in force and effect, that, except as to 320 acres thereof, there was no evidence before the Board of Directors of the Madera Irrigation District to support the finding of fact that the lands of petitioners would be benefited by the operations of the Madera Irrigation District.

VI

That it is true that at the time of the hearing of said Petition, as heretofore set forth, and the making of the Order that said Petition for Exclusion be denied, the respondent Madera Irrigation District had completed its negotiations with the United States of America for the terms of a contract for the purchase of irrigation water and the construction of a distribution system, which said contract was introduced herein, marked "Petitioners' Exhibit 4." That it is true that the respondent Madera Irrigation District had presented the terms of said contract to, and obtained the approval of, the California District Securities Commission. That it is true that the respondent Madera Irrigation District had thereafter given notice for the calling of an election in the Madera Irrigation District [fol. 25] for the purpose of authorizing the Directors of the Madera Irrigation District to execute said contract with the United States of America. That it is true that thereafter, on the 9th day of May, 1951, an election was held in the Madera Irrigation District. That it is true that the results of said election were legally determined by the Board of Directors of the said Madera Irrigation District on the 13th day of May, 1951. That it is true that on the 14th day of May, 1951, the said contract (petitioners' Exhibit 4, herein) was executed by the Madera Irrigation District, and by Richard L. Boke, Regional Director, Region 2, Bureau of Reclamation, United States Department of the Interior, on the behalf of the United States of America. That it is true that the entire operations of said District in relation to the said lands of the petitioners will be pursuant to and in conformity with said contract. That it is true that said contract (petitioners' Exhibit 4 herein), by its terms, prohibits the delivery of water by the Madera Irrigation District to any one person owning more than 160 acres of land, or, as in the case of these petitioners, where the petitioners are married and the property is community property, prohibits the delivery of water by the Madera Irrigation District to more than 320 acres of the land of the petitioners, unless the petitioners comply with the provisions of Section 28 of said contract.

VII

That it is true that if Sections 28, 29, and 30 of the [fol. 26] Contract between the United States and the Madera Irrigation District for Water Service and Construction of a Distribution System, are valid and in force and effect, that, except as to 320 acres thereof, the lands of petitioners described in said Petition will not be benefited by the operations of the Madera Irrigation District. That it is true that, except as to 320 acres thereof, the only benefit that can be received by the lands of the petitioners from the operations of the Madera Irrigation District is the delivery of a supplemental surface supply of water for said lands.

VIII

That the allegations contained in paragraph XIII of petitioners' Petition for Writ of Mandate are true.

IX

That it is true that petitioners have paid assessments on said tract of land to the Madera Irrigation District for the past twenty (20) years.

X

That it is true that the Madera Irrigation District, prior to the 24th day of May, 1939, acquired the land comprising Friant Dam Site, certain gravel bearing lands, and certain water rights on the San Joaquin River and its tributaries, which said properties were acquired by the Madera Irrigation District from funds derived through the assessment of lands within its boundaries, including the lands of petitioners herein. That it is true that the Madera Irrigation District and the United States, on the 24th day of [fol. 27] May, 1939, executed a contract assigned symbol and number "Ilr-1126" and entitled, "Contract for Purchase of Property and Water Rights." That it is true that in said 1939 contract, it was provided, among other things, that the Madera Irrigation District would convey to the United States the land comprising Friant Dam Site,

certain gravel bearing lands therein described, and all of the District's right, title and interest in and to all of the District's water rights on the San Joaquin River and its tributaries. That it is true that pursuant to the terms of said 1939 contract, the Madera Irrigation District became entitled to purchase from Friant Dam and Reservoir a permanent supplemental supply of Class 1 and Class 2 water as therein more particularly described.

XI

That it is true that the current expenses of operating the Madera Irrigation District and the repayment of any sums advanced to or borrowed by the Madera Irrigation District and the sums used to construct canals, headgates or other works of the District, are derived from assessments against all of the lands in the District, including the lands of petitioners herein.

XII

That it is true that Sections 28, 29, and 30 of the Contract between the United States and the Madera Irrigation District for Water Service and Construction of a Distribution System (petitioners' Exhibit 4 herein) are by [fol. 28] their nature susceptible to division from the remainder of the contract in respect to the matters and things contemplated and embraced therein, and the remainder of said Contract is not dependent upon said Sections, nor was it intended by the parties that said remainder be dependent upon said Sections.

XIII

That it is true, that if Sections 28, 29, and 30 of the Contract between the United States and the Madera Irrigation District for Water Service and Construction of a Distribution System (petitioners' Exhibit 4, herein) are void and of no force or effect, and a supplemental surface supply of water is delivered to the lands of the petitioners by the Madera Irrigation District, that the lands of the petitioners will be benefited by the operations of the District.

XIV

That it is true that petitioners did not consent to the terms of the Contract between the United States and the Madera Irrigation District for Water Service and Construction of a Distribution System, dated the 14th day of May, 1951. That it is true that petitioners did not consent to the terms of that agreement entitled "Contract for Purchase of Property and Water Rights" between the Madera Irrigation District and the United States, dated the 24th day of May, 1939.

XV

That it is true that the execution by the respondent Board of Directors of the respondent Madera Irrigation [fol. 29] District of the aforesaid Contract for Water Service and Construction of a Distribution System (petitioners' Exhibit 4, herein) adopted and applied a general plan of operation for the Madera Irrigation District that will benefit only 329 acres of the lands of the petitioners.

Conclusions of Law

1. That the object and purposes for which the Madera Irrigation District was and is formed is to benefit all of the lands within the District by obtaining and distributing such water as may be necessary for the irrigation thereof, thus enabling each land owner within the District to have for his land the benefit of a common system of irrigation.

2. That all of the rights and other properties of the Madera Irrigation Distri. are held in trust for the uses and purposes hereinbefore set forth. That the beneficiaries of the trust are all of the land owners in the District, including the petitioners herein. That the interests of petitioners, as beneficiaries of this trust, are vested private property rights.

3. That if Sections 28, 29 and 30 of the Contract between the United States and the Madera Irrigation District for Water Service and Construction of a Distribution System (petitioners' Exhibit 4, herein) were in force and effect

as a part of the general plan of operation of the District, the petitioners herein would be entitled to the writ prayed for.

4. That Sections 28, 29, and 30 of the Contract between the United States and the Madera Irrigation District for [fol. 30] Water Service and Construction of a Distribution System (petitioners' Exhibit 4, herein), when applied to petitioners, are in violation of Section I of the 14th Amendment to the Constitution of the United States, the 5th Amendment to the Constitution of the United States, Section I of Article I of the Constitution of the State of California, Section XIII of Article I of the Constitution of the State of California, and Section XIV of Article I of the Constitution of the State of California, and said Sections of said Contract are, when so attempted to be applied, void and of no force or effect.

5. That Sections 28, 29, and 30 of the Contract between the United States and the Madera Irrigation District for Water Service and Construction of a Distribution System (petitioners' Exhibit 4, herein) are severable from the remainder of said Contract.

6. That petitioners cannot legally be denied, for any of their lands, their division of the water delivered to the Madera Irrigation District.

7. That if the general plan of operation of the Madera Irrigation District, as adopted and applied by the Board of Directors of the Madera Irrigation District, should continue to require compliance with the excess land conditions or limitations set forth in paragraphs 28, 29 or 30 of the Contract between respondents and the United States (petitioners' Exhibit 4, herein) as a condition to petitioners receiving for all of their land their fair, ratable portion of [fol. 31] the water distributed by the District for irrigation purposes, then, and in that event, a peremptory writ of mandate should issue from this Court directing and compelling the Board of Directors of the Madera Irrigation District to make its order vacating and setting aside its previous order of April 12, 1951, denying petitioners' petition for exclusion, and to make its order excluding from

the Madera Irrigation District the lands of petitioners, except as to 320 acres thereof.

8. That if the general plan of operation of the Madera Irrigation District, as adopted and applied by the Board of Directors of the Madera Irrigation District, should supply all of the lands of petitioners their fair, ratable portion of the water distributed by the District for irrigation purposes, without imposition of the excess land conditions or limitations set forth in paragraphs 28, 29, or 30 of the Contract between the respondent and the United States (petitioners' Exhibit 4, herein), then, and in that event, the writ herein prayed for should be denied.

9. That petitioners are entitled to recover their costs from respondents.

Let judgment be entered accordingly.

Dated this 28 day of January, 1952.

Arthur C. Shepard, Judge of the Superior Court.

[fol. 34] In the Superior Court of the State of California in and for the County of Madera

No. 8497

Phillip Albonico and Jane E. Albonico, his wife, Petitioners,

v.

Madera Irrigation District, A Corporation, and John M. Allen, C. A. Ridgeway, Allen T. Roberts, Dee V. Romans and John A. Franchi, Directors of the Madera Irrigation District, Respondents.

Judgment—January 28, 1952

An alternative writ of mandate having issued herein on the 14th day of May, 1951, in the above entitled matter, and the same having come regularly before the Court for

hearing on the 8th day of June, 1951, in the Superior Court of the State of California, in and for the County of Madera, pursuant to an order to show cause issued in connection with said alternative writ of mandate, Green, Green, Plumley & Kuney, by Denslow Green and Kenneth A. Kuney, appearing as attorneys for petitioners, and David E. Peckinpah and L. N. Barber appearing as attorneys for respondents, and the Court having heard the testimony and having examined the proofs offered by the petitioners, and the Court being fully advised in the premises, and having filed herein its findings of fact and conclusions of law, and having directed that the writ prayed for herein should be granted if the respondent Board of Directors of the respondent Madera Irrigation District continues to apply the present general plan of operation of the Madera [fol. 35] Irrigation District; now, therefore, by reason of the law and findings aforesaid:

It Is Ordered, Adjudged and Decreed that if the general plan of operation of the Madera Irrigation District, as adopted and applied by the Board of Directors of the Madera Irrigation District, should continue to require compliance with the excess land conditions or limitations set forth in paragraphs 28, 29, or 30 of the Contract between the respondent and the United States (petitioners' Exhibit 4, herein) as a condition to petitioners receiving for all of their land their fair, ratable portion of the water distributed by the District for irrigation purposes, then, in that event, a peremptory writ of mandate shall issue from this Court directing and compelling the Board of Directors of the Madera Irrigation District to make its order vacating and setting aside its previous order of April 12, 1951, denying petitioners' petition for exclusion, and to make its order excluding from the Madera Irrigation District the lands of petitioners, except as to 320 acres thereof.

It Is Further Ordered, Adjudged and Decreed that if the general plan of operation of the Madera Irrigation District, as adopted and applied by the Board of Directors of the Madera Irrigation District, should supply all of the lands of petitioners their fair, ratable portion of the water distributed by the District for irrigation purposes, without imposition of the excess land conditions or limita-

tions set forth in paragraphs 28, 29, or 30 of the Contract between the respondent and the United States (petitioners' [fol. 36] Exhibit 4, herein); then, and in that event, the writ herein prayed for shall be denied.

It Is Further Ordered, Adjudged and Decreed that petitioners have and recover of the respondents their costs and disbursements in this action, amounting to One hundred forty nine and 45/100 Dollars."

Dated this 28 day of January, 1952.

Arthur C. Shepard, Judge of the Superior Court.

[File endorsement omitted]

[fol. 42] In the Superior Court of the State of California, in and for the County of Madera

Madera, California.

Court Convenes.

Present: Hon. Arthur C. Shepard, Judge
Erma E. Chenvront, Clerk
F. E. Rodman, Deputy Sheriff

Hon. Arthur C. Shepard presiding on designation of Judicial Council.

Civil No. 8497

Phillip Albonico, et ux, Plaintiffs,

v.

Madera Irrigation District, et al., Defendants.

Minutes of June 8, 1951—Demurrer

The above entitled cause came on regularly for hearing. Messrs. Green, Green, Plumley & Kuney by Denslow Green and Kenneth Kuney, counsel for Plaintiffs, and D. E. Peckinpah and L. N. Barber, counsel for Defendants, are present in Court. L. N. Barber argues the Demurrer

on behalf of the Defendants. Kenneth Kuney argues the Demurrer on behalf of the Plaintiffs. Court orders that the hearing on Merits be heard at this time. It is stipulated that Directors have viewed the property in question. It is stipulated by respective counsel, that the map referred to on Page 45 of the Transcript to Petition be admitted in evidence. Map, State of California, Department of Public Works, Division of Water Resources, Lines of Equal Water Elevation in Wells in the Upper San Joaquin Valley in the Fall of 1949, is offered in evidence, admitted and [fol. 43] marked Petitioner's Exhibit No. 1. Reporter's Transcript, parts applicable to this hearing, is offered in evidence, admitted and marked Petitioner's Exhibit No. 2. It is stipulated by respective counsel, that all maps referred to in Reporter's Transcript be used as evidence and admitted and marked Petitioner's Exhibit No. 3. Copy of Contract between U. S. Government and Madera Irrigation District, is offered in evidence, admitted and marked Petitioner's Exhibit No. 4. It is stipulated by respective counsel, that Exhibit No. 4 is Contract referred to in Petitioner's Complaint. Denslow Green makes statement to the Court. David Peckinpah makes statement to the Court. The Demurrer will stand submitted upon filing of Briefs 20—20 & 10.

[fol. 46] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MADERA

No. 8497

[Title omitted]

ORDER FOR CORRECTION OF MINUTES AND TRANSCRIPT ON APPEAL—May 22, 1952

On stipulation of the parties, and good cause appearing therefor,

It Is Ordered that the minutes of the Court in the above entitled action, dated June 8, 1951, be corrected by Substituting for the sentence reading as follows: "It is stipu-

lated that Directors have viewed the property in question", the following, to wit: "It is stipulated that the Directors viewed the property described in the petition for exclusion after the hearing of said petition and before the making of the order denying the petition."

It Is Further Ordered that the transcript on appeal be corrected accordingly.

Dated: May 22, 1952

Arthur C. Shepard, Assigned Judge of Said Superior Court.

[fol. 48]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Sac. No. 6460

PHILLIP ALBONICO, et al., Plaintiffs and Respondents,

v.

MADERA IRRIGATION DISTRICT, et al., Defendants and Appellants.

NOTICE OF APPEAL BY THE MADERA IRRIGATION DISTRICT TO THE SUPREME COURT OF THE UNITED STATES

I

Notice is hereby given that the Madera Irrigation District, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of California affirming the judgment of the Superior Court in and for the County of Madera, State of California, which, in effect, declared invalid that certain contract between the Madera Irrigation District and the United States dated May 14, 1951. The opinion of the Supreme Court of the State [fol. 49] of California was filed on January 24, 1957; rehearing was denied by that Court on February 19, 1957.

This appeal is taken pursuant to 28 U.S.C.A. Section 1257 (1).

II

The Clerk of the Supreme Court of the State of California will please prepare a transcript of the record in this proceeding for transmission to the Clerk of the Supreme Court of the United States. He shall include in said transcript the following:

1. The record consisting of Clerks-Trans.—1 Vol. heretofore filed with the Supreme Court of the State of California on the appeal to said Court.
2. The opinion in this proceeding filed January 24, 1957.
3. The petition of the Madera Irrigation District for a rehearing filed February 6, 1957, the answers thereto, and all the *amicus curiae* briefs filed in support thereof or opposition thereto, and the answers to such *amicus curiae* briefs.
4. The Order of February 19, 1957, denying a rehearing.
5. This Notice of Appeal.

III

The questions presented by this appeal all relate to the validity of the previously identified contract between the [fol. 50] United States and the Madera Irrigation District, an agency of the State of California, providing for delivery of a water supply to the District from the federal Central Valley Project, and the expenditure and repayment of funds for construction of a distribution system by the United States to distribute this water supply within the District.

These questions are as follows:

I. Section 46 of the *Omnibus Adjustment Act of 1926* (~~44 Stat. 649 (1926), 43 U.S.C. Section 423e (1952)~~) precludes delivery of water from federal reclamation projects to land held in private ownership by any one owner in excess of 160 irrigable acres unless certain conditions are met.

(a) Does this section apply only to public lands of the United States or does it also apply to lands in private ownership?

(b) Is this section valid or does it deprive owners of more than 160 acres of land in federal reclamation projects in California of property without due process of law, and does it deny them equal protection of the laws?

(c) The California *Irrigation District Federal Cooperation Law* (Calif. Water Code Sections [fol. 51] 23175 et seq.) provides for the delivery and distribution of water acquired under any contract with the United States "under the relevant acts of Congress" (id. Section 23197 (a)), and "in accordance with the applicable acts of Congress" (id. Section 23200). Is this section 46 one of the "relevant" and "applicable" acts of Congress referred to in the California *Irrigation District Federal Cooperation Law?*

(d) Does the application of this section 46 depend in any way on whether "the title to the water to be purveyed is (or is not) an unlimited title in the United States?"

(e) Does Section 8 of the *Reclamation Act of 1902* (32 Stats. 390 (1902), 43 U.S.C. Sections 372, 383) require the United States to deliver water in accordance with a trust under state law, assuming such trust would prevent the imposition of the limitation in this section 46?

2. Does the validity of the contract involve consideration of the water rights of anyone and particularly of the United States?

3. Is the United States a party to this proceeding?

4. If the United States is not a party, did the courts of California have jurisdiction to determine:

a. What water rights or title the United States has [fol. 52] acquired?

b. What sort of water rights the United States could acquire in California, whether from the State of California or from others?

5. Can a trust imposed on water rights pursuant to State law prevent the United States from acquiring the water rights it needs to accomplish a federal purpose?

6. Are the rights of the beneficiaries under the trust declared to exist by the California Supreme Court property rights within the meaning of the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution?

7. Assuming the rights referred to in Paragraph 6 are property rights within the meaning of the United States Constitution, does the 160 acre water limitation in Section 46 of the *Omnibus Adjustment Act of 1926* deprive the owners thereof of those rights?

David E. and Denver C. Peckinpah, By Denver C. Peckinpah, Attorneys for the Appellant, Madera Irrigation District, 1229 "N" Street, Fresno 21, California.

[fol. 53] Affidavit of service (omitted in printing).

[fol. 2] David S. Licker, District Attorney, Court House, Santa Barbara, California, Telephone 4165, Lawrence M. Parma, Deputy District Attorney, 15 West Carrillo Street, Santa Barbara, California, Telephone 2-0031, Attorneys for Plaintiff.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA BARBARA

No. 43906

The Santa Barbara County Water Agency, created by the laws of the State of California, Plaintiff,

v.

All Persons and Parties Who Have Any Interest in, or Who Are Interested in, or Are to Be Interested in, or Claim to Have Any Interest in: That Certain Contract Dated September 12, 1949, by and Between the Santa Barbara County Water Agency and the United States of America, Entitled "Contract for the Furnishing of Water to Member Units of Santa Barbara County Water Agency" Which Contract was Executed on September 12, 1949, by Said Agency and the United States of America, or the Proceedings of the Board of Directors of the Santa Barbara County Water Agency or the Proceedings of the Santa Barbara County Water Agency Leading Up to and Including the Making of Said Contract and the Validity of the Provisions of Said Contract, or in the [fol. 3] Proceedings had for the Organization of the Santa Barbara County Water Agency; and all Persons and Parties who Have any Interest in, or who are Interested in, or are to be Interested in, or Claim to Have any Interest in or Lien or Claim Upon the Property Within Said Santa Barbara County Water Agency, or any Part Thereof; and All Property Within Said Santa Barbara County Water Agency. All Persons and Parties who Have any Interest in, or who are Interested in, or are to be Interested in, or Claim to Have any Interest in: That Certain Contract Dated September 12, 1949, by and Between the Santa Barbara

County Water Agency and the Carpinteria County Water District, a County Water District, Entitled "Contract for the Furnishing of Water to Carpinteria County Water District" Which Contract was Executed by the Santa Barbara County Water Agency September 12, 1949, and by the Carpinteria County Water District on December 7, 1949, or the Proceedings of the Board of Directors of the Carpinteria County Water District or the Proceedings of the Carpinteria County Water District, or the Proceedings of the Board of Directors of Said Santa Barbara County Water Agency or the Proceedings of Said Santa Barbara County Water Agency Leading Up to and Including the Making of Said Last-Mentioned Contract and the Validity of the Provisions of Said Contract, or in the Proceedings had for the organization of Said Santa Barbara County Water Agency or Said Carpinteria County Water District; and All Persons and Parties who Have any Interest in, or who Are Interested in, or Claim to Have any Interest in or Lien or Claim Upon the Property Within Said Santa Barbara County Water Agency, or Any Part Thereof, or Within Said Carpinteria County Water District, or any Part Thereof; and All Property Within Said Santa Barbara County Water Agency and Said Carpinteria County Water District.

All Persons and Parties Who Have Any Interest in, or Who Are Interested in, or Are to Be Interested in, or Claim to Have Any Interest in: That Certain Contract Dated September 12, 1949, By and Between the Santa [fol. 4] Barbara County Water Agency and the Goleta County Water District, a County Water District, Entitled "Contract for the Furnishing of Water to Goleta County Water District" Which Contract Was Executed by the Santa Barbara County Water Agency September 12, 1949, and by the Goleta County Water District on December 1, 1949, or the Proceedings of the Board of Directors of the Goleta County Water District or the Proceedings of the Goleta County Water District, or the Proceedings of the Board of Directors of Said Santa Barbara County Water Agency or the Proceedings of Said Santa Barbara County Water Agency Leading up

to and Including the Making of Said Last-Mentioned Contract or the Validity of the Provisions of Said Contract, or in the Proceedings Had for the Organization of Said Santa Barbara County Water Agency or Said Goleta County Water District; and All Persons and Parties Who Have Any Interest in, or Who Are Interested in, or Claim to Have Any Interest in or Lien or Claim Upon the Property Within Said Santa Barbara County Water Agency, or Any Part Thereof, or Within Said Goleta County Water District, or Any Part Thereof; and All Property Within Said Santa Barbara County Water Agency or Said Goleta County Water District.

All Persons and Parties Who Have Any Interest in, or Who Are Interested in, or Are to Be Interested in, or Claim to Have Any Interest in: That Certain Contract Dated September 12, 1949, by and Between The Santa Barbara County Water Agency and the Montecito County Water District, a County Water District, Entitled "Contract for the Furnishing of Water to Montecito County Water District" Which Contract Was Executed by the Santa Barbara County Water Agency September 12, 1949, and by the Montecito County Water District on December 8, 1949, or the Proceedings of the Board of Directors of the Montecito County Water District or the Proceedings of the Montecito County Water District, or the Proceedings of the Board of Directors of Said Santa Barbara County Water Agency or the Proceedings of Said Santa Barbara County Water Agency Leading up to and Including the Making of Said Last-Mentioned Contract or the Validity of the Provisions of Said Contract, or in the Proceedings Had for the Organization of Said Santa Barbara County Water Agency or Said Montecito County Water District; and All Persons and Parties Who Have Any Interest in, or Who Are Interested in, or Claim to Have Any Interest in or Lien or Claim Upon the Property Within Said Santa Barbara County Water Agency, or [fol. 5] Any Part Thereof, or Within Said Montecito County Water District, or Any Part Thereof; and All Property Within Said Santa Barbara County Water Agency or Said Montecito County Water District.

All Persons and Parties Who Have Any Interest in, or Who Are Interested in, or Are to Be Interested in, or Claim to Have Any Interest in: That Certain Contract Dated December 8, 1949, by and Between the Santa Barbara County Water Agency and the Summerland County Water District, a County Water District, Entitled "Contract for the Furnishing of Water to Summerland County Water District" Which Contract Was Executed by the Santa Barbara County Water Agency September 12, 1949, and by the Summerland County Water District on December 8, 1949, or the Proceedings of the Board of Directors of the Summerland County Water District or the Proceedings of the Summerland County Water District, or the Proceedings of the Board of Directors of Said Santa Barbara County Water Agency or the Proceedings of Said Santa Barbara County Water Agency Leading up to and Including the Making of Said Last-Mentioned Contract or the Validity of the Provisions of Said Contract, or in the Proceedings Had for the Organization of Said Santa Barbara County Water Agency or Said Summerland County Water District; and All Persons and Parties Who Have Any Interest in, or Who Are Interested in, or Claim to Have Any Interest in or Lien or Claim Upon the Property Within Said Santa Barbara County Water Agency, or Any Part Thereof, or Within Said Summerland County Water District, or Any Part Thereof; and All Property Within Said Santa Barbara County Water Agency and Said Summerland County Water District. All Persons and Parties Who Have Any Interest in, or Who Are Interested in, or Are to Be Interested in, or Claim to Have Any Interest in: That Certain Contract Dated September 12, 1949, Executed by and Between the Santa Barbara County Water Agency and the City of Santa Barbara, a Municipal Corporation, Entitled "Contract for the Furnishing of Water to the City of Santa Barbara" Which Contract Was Executed by the Santa Barbara County Water Agency September 12, 1949, and by the City of Santa Barbara on November 29, 1949, or the Proceedings of the Council of the City of Santa Barbara or the Proceedings of the

City of Santa Barbara, or the Proceedings of the Board of Directors of Said Santa Barbara County Water Agency or the Proceedings of Said Santa Barbara County Water Agency Leading up to and Including the Making of Said Last-Mentioned Contract or the Validity of the Provisions of Said Contract, or the Proceedings Had for the Organization of Said Santa [fol. 6] Santa (sic) Barbara County Water Agency or Said City of Santa Barbara; and All Persons and Parties Who Have Any Interest in, or Who Are Interested in, or Claim to Have Any Interest in or Lien or Claim Upon the Property Within Said Santa Barbara County Water Agency, or Any Part Thereof, or Within Said City of Santa Barbara, or Any Part Thereof; and All Property Within Said Santa Barbara County Water Agency and Said City of Santa Barbara, Defendants.

COMPLAINT IN REM TO DETERMINE VALIDITY OF CERTAIN CONTRACTS BETWEEN THE SANTA BARBARA COUNTY WATER AGENCY, AND THE UNITED STATES OF AMERICA, THE CARPINTERIA COUNTY WATER DISTRICT, GOLETA COUNTY WATER DISTRICT, MONTECITO COUNTY WATER DISTRICT, SUMMERLAND COUNTY WATER DISTRICT, AND THE CITY OF SANTA BARBARA RESPECTIVELY—February 6, 1950

Comes now the Plaintiff above-named and for cause of action complains and alleges as follows:

First Cause of Action

I:

The Santa Barbara County Water Agency (hereinafter for purposes of brevity sometimes referred to as the "Agency") now is, and at all times herein mentioned continuously was, and has been a district of the State of California duly and regularly organized and existing under and by virtue of the laws of the State of California, to wit: that certain Act of the Legislature of the State of California known as "The Santa Barbara County Water Agency Act", being Chapter 1501 of the Statutes of the Fifty-Sixth (56th) Session of the Legislature of the State

of California (1945 California Statutes, Chapter 1501, Pages 2780-2801), approved July 18, 1945, as amended by that certain Act of the Legislature of the State of California, being Chapter Twelve (12) of the Statutes of the State of California enacted at the 1949 Regular Session of the Legislature of the State of California, approved [fol. 7] February 3, 1949 (1949 California Statutes, Chapter 12, Pages 18 to 27).

II.

That by an Act of the First Extra Session of the Fifty-Sixth (56th) Legislature of the State of California entitled "An Act to validate the organization, boundaries, governing officers or boards, acts, proceedings and bonds of public bodies, to take effect immediately", approved February 12, 1946 (Chapter 17 of the 1st Extra Session of the 56th Legislature, 1947 California Statutes, pages 20-23), and by an Act of the 1949 Regular Session of the Legislature of the State of California entitled "An Act to validate the organization, boundaries, governing officers or boards, acts, proceedings, elections, and bonds of public bodies as herein defined, declaring the urgency of this act, to take effect immediately", approved June 30, 1949 (1949 California Statutes, Chapter 781, pages 1508-1511), said Legislature confirmed, validated, and declared legally established the boundaries of the Santa Barbara County Water Agency, and declared the members of the Board of Directors and the officers of said Agency theretofore elected or appointed and acting as such were the legally appointed or elected, qualified and acting members of such Board of Directors and officers.

III.

That C. W. Bradbury, Paul E. Stewart, R. B. McClellan, T. A. Twitchell and William N. Hollister now are and [fol. 8] constitute, and continuously at all times herein mentioned since January 3, 1949, have been and constitute, the whole of the Board of Directors of the Santa Barbara County Water Agency; that at all times from September 15, 1945, continuously to January 3, 1949, the same persons

above-named were and constituted said Board of Directors, save and except that during said period last mentioned J. Monroe Rutherford was a member of said Board of Directors in the place of William N. Hollister who was not then such a member; and at all times herein mentioned T. A. Twitchell was the Chairman of said Board of Directors, and J. E. Lewis now is, and continuously at all times herein mentioned since January 3, 1949 has been, the Clerk of the Santa Barbara County Water Agency.

IV

That the Defendants in this cause of action are as follows: all parties or persons who have any interest in, or are to be interested in, or claim to have any interest in: That certain contract dated September 12, 1949, executed by and between the Santa Barbara County Water Agency and the United States of America entitled "Contract for the Furnishing of Water to Member Units of Santa Barbara County Water Agency", or the proceedings of the Board of Directors of the Santa Barbara County Water Agency, or the proceedings of the Santa Barbara County Water Agency leading up to and including the making of said contract, or the validity of the provisions of said contract, or in the proceedings had for the organization of [fol. 9] the Santa Barbara County Water Agency; and all persons and parties who have any interest in, or who are interested in, or are to be interested in, or claim to have any interest in or lien upon the property within said Santa Barbara County Water Agency or any part thereof; and all property within said Santa Barbara County Water Agency.

V

In order to secure additional water for the lands and inhabitants of certain portions of the Agency, in need thereof, to wit: Those portions of the Agency lying within the City of Santa Barbara, the Carpinteria, Goleta, Montecito and Summerland County Water Districts and the Santa Ynez River Water Conservation District, the Board of Directors of the Agency, on or about September 15,

1945, commenced, and has since pursued negotiations with the United States of America, Department of the Interior, Bureau of Reclamation, in an endeavor to obtain from the project commonly designated by said Bureau of Reclamation as "the Cachuma Unit of the Santa Barbara County Project, California" a supply of water for use within the Agency. As a result of such negotiations, the United States of America, represented by Richard L. Boke, Regional Director, Region 2, Bureau of Reclamation, United States Department of the Interior, has offered and agreed to furnish to the Agency and to said City of Santa Barbara, Carpinteria, Goleta, Montecito and Summerland County Water Districts and Santa Ynez River Water [fol. 10] Conservation District, a supply of water for irrigation and municipal purposes and for the irrigation of the land within said City and said County Water Districts and said Water Conservation District, in the amount and upon the terms and conditions which are set forth in the contract between the United States of America and the Santa Barbara County Water Agency, dated September 12, 1949, a true copy of which is attached hereto, marked Exhibit "A", and by reference incorporated herein as if hereat fully set forth, and which is hereinafter for purposes of brevity sometimes referred to as the "Master Contract".

VI

That on the 12th day of September, 1949, the Board of Directors of said Agency, at a duly and regularly called, noticed and held special meeting of said Board on said day, at the usual and regular place of meeting of said Board, to wit: the Board of Supervisors meeting room in the County Court House in the City of Santa Barbara, all five members of said Board being present and voting therefor, did duly and regularly pass and adopt Resolution Number Nine (9) finding that all liabilities incurred by the Agency under said proposed Master Contract could be repaid as to both principal and interest from revenues derived from taxes levied pursuant to section 10.1 of the Santa Barbara County Water Agency Act and from payments to be made to the Agency by its respective member

units (being the aforesaid City and Districts) pursuant to written contracts providing for the payment currently [fol. 11] by said respective member units of whatever amounts might be necessary to pay the portion of the cost of any water or water supply to be furnished or sold to the Agency and to such respective member units, and finding that no Agency election under section 6.1 of said Santa Barbara County Water Agency Act was necessary or required as a condition to the execution by the Agency of said proposed Master Contract, and authorizing forthwith the execution by the Agency of said proposed Master Contract and authorizing and requiring said T. A. Twitchell, the Chairman of the Board of Directors of the Agency, and said J. E. Lewis, the Clerk of the Agency, to forthwith execute said proposed Master Contract on behalf of and in the name of the Agency and to affix to said Master Contract the seal of the Agency. That a true copy of said Resolution Number Nine (9) is attached hereto, marked Exhibit "B", and by reference incorporated herein as if hereat fully set forth.

VII

That immediately thereafter, on said 12th day of September, 1949, pursuant and agreeable to said Resolution Number Nine (9), said T. A. Twitchell and said J. E. Lewis, in their aforesaid capacities as Chairman and Clerk as aforesaid, did, at the City of Santa Barbara, County of Santa Barbara, State of California, execute said Master Contract on behalf of and in the name of the Agency and said Clerk did affix the seal of the Agency thereto, and did deliver said contract to the United States of America.

[fol. 12] VIII

That thereafter said Master Contract, on said 12th day of September, 1949, at the City of Santa Barbara, County of Santa Barbara, State of California, was duly and regularly executed and delivered to the Agency, by the United States of America, acting for that purpose by and through Richard L. Boke, the duly appointed, acting and qualified Regional Director, Region 2, Bureau of Reclamation of

the United States Department of the Interior, said Richard L. Boke being duly and regularly empowered by the United States of America so to do. That thereafter said Master Contract was endorsed thereon "Approved as to legal form and sufficiency, John K. Bennett, Acting Regional Counsel" and was endorsed thereon with an identification number, to wit: "Contract Symbol & No. 175r-1802".

IX

That on the 6th day of June, 1949, at an adjourned regular meeting of the Board of Directors of the Agency, duly and regularly held on said day at the aforementioned usual and regular place of meeting of said Board, all members of said Board being present except C. W. Bradbury, and all members present voting therefor, said Board of Directors, by resolution, to wit: Resolution Number Seven (7), did approve said proposed Master Contract as to form, and by said Resolution Number Seven (7) did direct the Chairman of said Board of Directors and the [fol. 13] Clerk of said Agency to submit the proposal to enter into a contract with the United States, as embodied in said proposed Master Contract and the said Resolution Number Seven (7) approving said proposed Master Contract as to form, with such plans and estimates of cost as had been made in connection therewith, to the California Districts Securities Commission for such investigation, examination, report and other proceedings as might be required by law. A true copy of said Resolution Number Seven (7) is attached hereto, marked Exhibit "C", and by reference incorporated herein as if hereat fully set forth.

X

That thereafter on the 14th day of June, 1949, the aforesaid Chairman of the Board of Directors of the Agency and the aforesaid Clerk of the Agency, pursuant and agreeable to said Resolution Number Seven (7), did submit said proposal to enter into a contract with the United States, as embodied in said proposed Master Contract and said Resolution Number Seven (7), with such plans and estimates of cost as had been made in connection therewith,

to the California Districts Securities Commission, for its investigation, examination, report and other proceedings as might be required by law.

XI

That thereafter the California Districts Securities Commission did make an examination of said proposal as embodied in said proposed Master Contract and said Resolu- [fol. 14] tion Number Seven (7) with said plans and estimates of cost made in connection therewith, and thereafter, and upon the 7th day of July, 1949, did make its report thereon, in writing, to the Board of Directors of the Agency, which report was thereafter filed with the Clerk of the Agency.

XII

That said Master Contract, as executed by the United States of America and the Agency, is in all respects the same as the copy of the proposed Master Contract submitted to the California Districts Securities Commission as aforesaid, except that, pursuant to the report and recommendation of said Commission, Article 25(b) was added to said Master Contract.

XIII

That Article 29(b) of the Master Contract provides as follows:

> "In the event that within one year after the execution of this contract, there have not been executed contracts between the Agency and districts which in the aggregate will provide for the disposition of at least 8,100 acre-feet per year of the water to be made available pursuant hereto by the United States during the first period hereof, then this contract shall be of no force or effect. If this contract becomes effective but not all the proposed member units named in [fol. 15] sections (i) to (n), both inclusive, of Article 9 hereof execute such contracts with the Agency, then any provision hereof relating to any such proposed

member unit not executing such an Agency contract shall be disregarded and shall be given no force or effect and shall not create any right or liability in favor of or against the United States, the Agency, any governmental unit, city, district, person, corporation or association whether a party hereto or not."

XIV

That on the 12th day of September, 1949, and after the aforesaid Master Contract had been executed by both parties and delivered, the Board of Directors of said Agency at a duly and regularly called, noticed and held special meeting of said Board on said day, at the aforementioned usual and regular meeting place of said Board, all five members of said Board being present and voting therefor, did duly and regularly pass and adopt Resolution Number Ten (10) authorizing the execution forthwith by the Agency of six (6) proposed contracts with the aforesaid Districts and City, which contracts are hereinafter in this paragraph described as to title, parties and date of filing with the Agency, and requiring and authorizing T. A. Twitchell, Chairman of the Board of Directors, and J. E. Lewis, Clerk of the Agency, to forthwith execute [fol. 16] each of said last-mentioned proposed contracts (hereinafter for purposes of brevity sometimes called "member unit contracts") for and on behalf of and in the name of the Agency and to affix the seal of the Agency to each such proposed member unit contract, and requiring the said Clerk, after execution by the Agency of such proposed member unit contracts, to deliver the same to the respective proposed member units named in such proposed member unit contracts. Said proposed member unit contracts hereinabove referred to were as follows:

Proposed Member Unit Contract #	Parties to Proposed Member Unit Contract	Title of Proposed Member Unit Contract	Date of Filing Proposed Member Unit Contract with Clerk of Agency
1	Santa Barbara County Water Agency and Goleta County Water District	Contract for the Furnishing of Water to Goleta County Water District	September 12, 1949
2	Santa Barbara County Water Agency and Montecito County Water District	Contract for the Furnishing of Water to Montecito County Water District	September 12, 1949
3	Santa Barbara County Water Agency and Summerland County Water District	Contract for the Furnishing of Water to Summerland County Water District	September 12, 1949
[fol. 17]			
4	Santa Barbara County Water Agency and Carpinteria County Water District	Contract for the Furnishing of Water to Carpinteria County Water District	September 12, 1949
5	Santa Barbara County Water Agency and the City of Santa Barbara	Contract for the Furnishing of Water to the City of Santa Barbara	September 12, 1949
6	Santa Barbara County Water Agency and the Santa Ynez River Water Conservation District	Contract for the Furnishing of Water to Santa Ynez River Water Conservation District	September 12, 1949

XV

That immediately thereafter, and on September 12, 1949, pursuant and agreeable to said Resolution Number Ten (10), said T. A. Twitchell and said J. E. Lewis, in their aforesaid capacities as Chairman and Clerk as aforesaid, did execute each of the aforesaid proposed member unit contracts on behalf of and in the name of the Agency, and said Clerk did affix the seal of the Agency to each of such proposed member unit contracts, and thereafter the said Clerk did deliver said proposed member unit contracts, as so executed, to the respective member units therein named.

XVI

That on the 29th day of November, the City of Santa [fol. 18] Barbara, pursuant to an election held therein on November 22, 1949, did duly and regularly enact an initiative ordinance by a vote of the voters of said City, 11,405 votes being cast in favor of the enactment of, and 3,680 votes being cast against the enactment of, said ordinance, which ordinance is and was entitled as follows:

"An Ordinance of the City of Santa Barbara, California, Approving and Entering Into a Contract Between the Santa Barbara County Water Agency, Established by Chapter 1501 of the 1945 Statutes of California, as Amended, and the City of Santa Barbara, a Municipal Corporation of the State of California Duly Organized and Existing Under the Laws Thereof, for the Furnishing by Said Santa Barbara County Water Agency to Said City of Santa Barbara, a Water Supply From Cachuma Unit to and for the Use and Benefit of Said City of Santa Barbara, for Which Said City of Santa Barbara Will Make Payment to Said Santa Barbara County Water Agency or to the United States Upon the Bases, at the Rates and Pursuant to and Under the Terms and Conditions of the Aforementioned Contract, and Authorizing and Directing the Officers of the City of Santa Barbara to Sign, Countersign, Execute, Deliver and Do All

[fol. 19] Things Necessary to Enter Into and Consummate Said Contract All in Accordance to Law and the Provisions Hereof."

which ordinance approved and entered into the aforesaid proposed contract between the Agency and the said City theretofore executed by the Agency and authorized and directed the officers of said City to sign, countersign, execute, deliver and do all things necessary to enter into and consummate said contract last herein mentioned, all in accordance with law and said ordinance.

XVII

That thereafter, pursuant and agreeable to said ordinance, and on November 29, 1949, the officers of said City did sign, countersign, execute and deliver said contract last-mentioned to the Santa Barbara County Water Agency, and did date said contract as of September 12, 1949. That a true copy of said contract last herein mentioned is attached hereto, marked Exhibit "D", and by reference incorporated herein as if hereat fully set forth.

XVIII

That on the 28th day of November, 1949, the Carpinteria County Water District, pursuant to an election held therein on November 22, 1949, did duly and regularly enact an initiative ordinance by a vote of the voters of said District; 738 votes being cast in favor of the enactment of, and 197 votes being cast against the enactment of, said ordinance, which ordinance is and was entitled as follows:

[fol. 20] "An Ordinance of Carpinteria County Water District Authorizing and Directing the Proper Officers of Carpinteria County Water District to Execute and Enter Into a Contract With the Santa Barbara County Water Agency for the Furnishing by the Santa Barbara County Water Agency to Said Carpinteria County Water District of a Water Supply From Cachuma Unit to and for the Use and Benefit of Said Carpinteria County Water District, for Which

Said Carpinteria County Water District Will Make Payment to the Santa Barbara County Water Agency or to the United States, Upon the Bases, at the Rates and Pursuant to and Under the Terms and Conditions of the Aformentioned Contract."

which ordinance authorized and directed the proper officers of Carpinteria County Water District, by and on behalf of said Carpinteria County Water District, to execute and enter into the aforesaid proposed contract between said District and the Agency, theretofore executed by the Agency.

XIX

That thereafter, on the 7th day of December, 1949, the Board of Directors of the Carpinteria County Water District, at a duly and regularly called, noticed and held special meeting of said Board on said day, at the regular and usual place of meeting of said Board, to wit: at the [fol. 21] Veterans Memorial Building in Carpinteria in said District, four of the five members of said Board being present, and all said members present voting therefor, did duly pass and adopt Resolution Number Fifty-five (55) authorizing and directing the proper officers of Carpinteria County Water District for and on behalf of said District to execute and enter into the aforesaid proposed contract between said District and the Agency theretofore executed by the Agency.

XX

That thereafter and on December 7, 1949, pursuant and agreeable to the ordinance and resolution last mentioned, at Carpinteria in the County of Santa Barbara, State of California, the proper officers of said Carpinteria County Water District did date said last-mentioned contract as of September 12, 1949, and did execute, enter into and deliver to the Agency on behalf of said District the contract last mentioned. That a true copy of said last-mentioned contract is attached hereto, marked Exhibit "E", and by reference incorporated herein as if hereat fully set forth.

XXI

That on the 29th day of November, 1949, the Goleta County Water District, pursuant to an election held therein on November 22, 1949, did duly and regularly enact an initiative ordinance by a vote of the voters of said District, 1,642 votes being cast in favor of the enactment of, and 132 votes being cast against the enactment of, said [fol. 22] ordinance, which ordinance is and was entitled as follows:

> "An Ordinance of Goleta County Water District Authorizing and Directing the Proper Officers of Goleta County Water District to Execute and Enter Into a Contract With the Santa Barbara County Water Agency for the Furnishing by the Santa Barbara County Water Agency to Said Goleta County Water District of a Water Supply from Cachuma Unit to and for the Use and Benefit of Said Goleta County Water District, for which Said Goleta County Water District Will Make Payment to the Santa Barbara County Water Agency or to the United States, Upon the Bases, at the Rates and Pursuant to and Under the Terms and Conditions of the Aforementioned Contract."

which ordinance authorized and directed the proper officers of Goleta County Water District, by and on behalf of said Goleta County Water District, to execute and enter into the aforesaid proposed contract between said District and the Agency theretofore executed by the Agency.

XXII

That thereafter, on the 1st day of December, 1949, the Board of Directors of the Goleta County Water District, at a duly and regularly called, noticed and held special meeting of said Board on said day, at the regular and usual [fol. 23] place of meeting of said Board, to wit: at the Santa Barbara County Walnut Growers Association Building at Goleta, in said District, four of the five members of said Board being present, and all members present voting therefor, did duly pass and adopt Resolution Num-

ber Fourteen (14) authorizing and directing the proper officers of Goleta County Water District for and on behalf of said District to execute and enter into the aforesaid proposed contract between said District and the Agency theretofore executed by the Agency.

XXIII

That thereafter and on December 1, 1949, pursuant and agreeable to the ordinance and resolution last mentioned, the proper officers of said Goleta County Water District did date said contract last mentioned as of September 12, 1949, and did execute, enter into and deliver to the Agency on behalf of said District the contract last mentioned. That a true copy of said contract last-mentioned is attached hereto, marked Exhibit "F", and by reference incorporated herein as if hereat fully set forth.

XXIV

That on the 28th day of November, 1949, the Montecito County Water District, pursuant to an election held therein on November 22, 1949, did duly and regularly enact an initiative ordinance by a vote of the voters of said District, 1,294 votes being cast in favor of the enactment of, and 196 votes being cast against the enactment of, said ordinance, [fol. 24] which ordinance is and was entitled as follows:

> "An Ordinance of Montecito County Water District Authorizing and Directing the Proper Officers of Montecito County Water District to Execute and Enter Into a Contract with the Santa Barbara County Water Agency for the Furnishing by the Santa Barbara County Water Agency to Said Montecito County Water District of a Water Supply from Cachuma Unit to and for the Use and Benefit of said Montecito County Water District, for Which Said Montecito County Water District Will Make Payment to the Santa Barbara County Water Agency or to the United States, Upon the Bases, at the Rates and Pursuant to and Under the Terms and Conditions of the Aforementioned Contract."

which ordinance authorized and directed the proper officers of Montecito County Water District, by and on behalf of said Montecito County Water District, to execute and enter into the aforesaid proposed contract last mentioned between said District and the Agency theretofore executed by the Agency.

XXV

That thereafter on the 8th day of December, 1949, the Board of Directors of the Montecito County Water District, at a duly and regularly called, noticed and held [fol. 25] special meeting of said Board on said day, at the regular and usual place of meeting of said Board, to wit: at the office of said Board at 583 San Ysidro Road in said District, all five members of said Board being present and voting therefor, did duly pass and adopt Resolution Number Two Hundred Ninety-three-A (293A) authorizing and directing the proper officers of Montecito County Water District for and on behalf of said District to execute and enter into the aforesaid proposed contract last mentioned between said District and the Agency theretofore executed by the Agency.

XXVI

That thereafter and on December 8, 1949, pursuant and agreeable to the ordinance and resolution last mentioned, the proper officers of said Montecito County Water District did date said contract last mentioned as of September 12, 1949, and did execute, enter into and deliver to the Agency on behalf of said District the contract last mentioned. That a true copy of said contract last mentioned is attached hereto, marked Exhibit "G", and by reference incorporated herein as if hereat fully set forth.

XXVII

That on the 28th day of November, 1949, the Summerland County Water District, pursuant to an election held therein on November 22, 1949, did duly and regularly enact an initiative ordinance by a vote of the voters of

said District, 146 votes being cast in favor of the enactment [fol. 26] of, and 31 votes being cast against the enactment of, said ordinance, which ordinance is and was entitled as follows:

"An Ordinance of Summerland County Water District Authorizing and Directing the Proper Officers of Summerland County Water District to Execute and Enter Into a Contract With the Santa Barbara County Water Agency for the Furnishing by the Santa Barbara County Water Agency to Said Summerland County Water District of a Water Supply From Cachuma Unit to and for the Use and Benefit of Said Summerland County Water District, for Which Said Summerland County Water District Will Make Payment to the Santa Barbara County Water Agency or to the United States, Upon the Bases, at the Rates and Pursuant to and Under the Terms and Conditions of the Aforementioned Contract."

which ordinance authorized and directed the proper officers of Summerland County Water District by and on behalf of said Summerland County Water District to execute and enter into the aforesaid proposed contract last mentioned between said District and the Agency theretofore executed by the Agency.

XXVIII

That thereafter on the 8th day of December, 1949, the Board of Directors of the Summerland County Water District, at a duly and regularly called, noticed and held [fol. 27] special meeting of said Board on said day, at the regular and usual place of meeting of said Board, to wit: at Summerland School in said District, all five members of said Board being present and voting therefor, did duly pass and adopt a resolution authorizing and directing the proper officers of Summerland County Water District for and on behalf of said District to execute and enter into the aforesaid proposed contract last mentioned between said District and the Agency theretofore executed by the Agency.

XXIX

That thereafter and on December 8, 1949, pursuant and agreeable to the ordinance and resolution last mentioned, the proper officers of said Summerland County Water District did date said contract last mentioned as of December 8, 1949, and did execute; enter into and deliver to the Agency on behalf of said District the contract last mentioned. That a true copy of said contract last mentioned is attached hereto, marked Exhibit "H", and by reference incorporated herein as if hereat fully set forth.

XXX

That the Santa Ynez River Water Conservation District failed and refused to execute the hereinbefore mentioned proposed contract between said Santa Ynez River Water Conservation District and the Agency and rejected said contract, and the same has never been executed and is of no force nor effect.

[fol. 28]

XXXI

That each and every of the aforesaid contracts between the Agency and the Carpinteria, Goleta, Montecito and Summerland County Water Districts and said City was executed and delivered within one (1) year of the execution of the Master Contract, and said contracts executed as aforesaid between the Agency and said Districts and City provide in the aggregate for the disposition of at least 8,100 acre-feet, to wit: 8,200 acre-feet, per year of the water to be made available pursuant to the Master Contract by the United States during the first period of the Master Contract. Said contracts with said County Water Districts and said City provide for the following disposition of water during said first period to the respective contracting parties as follows:

City of Santa Barbara	3,300	acre-feet per year
Carpinteria County Water District	1,000	" " " "
Goleta County Water District	3,300	" " " "
Montecito County Water District	500	" " " "
Summerland County Water District	100	" " " "

XXXII

That each of said contracts executed by and between the Agency and said County Water Districts and City provides that such contract shall be subject to the terms of the Master Contract.

[fol. 29]

XXXIII

That each of said contracts executed by and between the Agency and said County Water Districts and City providing for the furnishing of water for irrigation uses includes Articles 25, 26, 27 and 28 of the Master Contract, with such revisions and modifications of such Articles as are necessary in the opinion of the Agency and the Secretary of the United States Department of the Interior.

XXXIV

That by the acts and proceedings held and taken as heretofore alleged said Santa Barbara County Water Agency was duly authorized to enter into and execute said Master Contract and said contracts with said County Water Districts and City and that said County Water Districts and City were duly authorized to enter into and execute said member unit contract; that each and every and all the acts and proceedings for and in connection with the authorization and execution of said Master Contract and said contracts with said County Water Districts and City were and are valid and lawful and all acts, conditions and things required by law and said Master Contract and said contracts with said County Water Districts and City to exist, happen, or be performed precedent to and in connection with the authorization and execution of said Master Contract and said contracts with said County Water Districts and City, did exist, happen, and were performed in regular and due time, form and manner as required by law, and said Agency was fully authorized [fol. 30] and empowered to enter into and execute said Master Contract and said contracts with said County Water Districts and City, and is fully authorized and empowered to perform and carry out the terms and conditions thereof on its part to be done, kept, performed and ob-

served, and that said Master Contract and said contracts with said County Water Districts and City and every term and provision thereof are and is within the power and authority of said Agency to execute, perform and carry out, and said County Water Districts and City were each fully authorized and empowered to execute said member unit contracts and each were fully authorized and empowered to perform and carry out the terms and conditions thereof on their respective parts to be kept, done, performed and observed, and every term and provision of said member unit contracts is within the power and authority of the respective County Water Districts and City to execute, perform and carry out.

XXXV

That on the 19th day of December, 1949, the Board of Directors of said Agency at a duly and regularly conducted regular meeting of said Board of Directors on said day, at the aforesaid usual and regular place of meeting of said Board, all five members of said Board being present and voting therefor, did duly and regularly pass and adopt Resolution Number Thirteen (13) of said Board of Directors, by which the Agency was directed to file and prosecute [fol. 31] in the above entitled Court appropriate legal action for the judicial examination, approval and confirmation of the proceedings had for the organization of the Agency and the proceedings of the Agency leading up to and including the making of the aforesaid Master Contract and said contracts with said County Water Districts and City and the validity of the provisions of each of said contracts, and authorizing the District Attorney of said County, who is ex-officio the Attorney of said Agency, to file such law suit or law suits for the aforesaid purposes as he deemed necessary and to prosecute the same in the name of and on behalf of the Agency, and authorizing the Chairman and Clerk of the Board of Directors of the Agency to sign and/or verify any and all pleadings therein on behalf of and in the name of the Agency.

Second Cause of Action

For a Further, Second and Separate Cause of Action Plaintiff Alleges:

I

Plaintiff hereby refers to the foregoing First Cause of Action, and thereby incorporates the same hereat by reference as if it were herein fully set forth.

II

That the Defendants in this cause of action, in addition to those specified in Paragraph IV of said First Cause of Action, are as follows: All persons and parties who have any interest in, or who are interested in, or are to be [fol. 32] interested in, or claim to have any interest in: That certain contract dated September 12, 1949, by and between the Santa Barbara County Water Agency and the Carpinteria County Water District, a county water district, entitled "Contract for the Furnishing of Water to Carpinteria County Water District", which contract was executed by the Santa Barbara County Water Agency September 12, 1949, and by the Carpinteria County Water District on December 7, 1949, or the proceedings of the Board of Directors of the Carpinteria County Water District or the proceedings of the Carpinteria County Water District, or the proceedings of the Board of Directors of said Santa Barbara County Water Agency or the proceedings of said Santa Barbara County Water Agency leading up to and including the making of said last-mentioned contract and the validity of the provisions of said last-mentioned contract, or in the proceedings had for the organization of said Santa Barbara County Water Agency or said Carpinteria County Water District; and all persons or parties who have any interest in, or who are interested in, or claim to have any interest in or lien or claim upon the property within said Santa Barbara County Water Agency, or any part thereof, or within said Carpinteria County Water District, or any part thereof; and

all property within said Santa Barbara County Water Agency and said Carpinteria County Water District.

III

That continuously at all times herein mentioned the [fol. 33] Carpinteria County Water District was and now is a county water district duly organized and existing under and by virtue of that certain Act of the Legislature of the State of California, known as the "County Water District Act", being Chapter 592 of the Statutes of the 40th Session of the California Legislature, approved June 10, 1913 (1913 California Statutes, Chapter 592) and acts amendatory thereof and supplementary thereto, which acts, since October 1, 1949, constitute Division 12 of the Water Code of California, which Division, since said latter date, is known as "The County Water District Law".

IV

That continuously at all times herein mentioned since January 3, 1949, Charles A. Catlin, also known as C. A. Catlin, Stanley L. Shepard, Clarence R. Sawyer, Burchell W. Upson and Max Young constituted and now are the whole of the Board of Directors of said Carpinteria County Water District; and that continuously at all times in this paragraph mentioned, Stanley L. Shepard and Ferlys W. Thomas have been and now are, respectively, the President and Secretary of said Carpinteria County Water District.

V

That at all times herein mentioned the aforesaid President and Secretary of said District last mentioned were the proper officers of said Carpinteria County Water District to execute and enter into the aforementioned contract, [fol. 34] designated herein as Exhibit "E", for and on behalf of Carpinteria County Water District.

VI

That on September 26, 1949, the Board of Directors of said Carpinteria County Water District, at a duly and

regularly called, noticed and held special meeting of said Board on said day at the aforesaid usual and regular place of meeting of said Board, all five members of said Board being present and voting therefor, did duly and regularly pass, adopt and enact an ordinance (being Ordinance No. 1) entitled:

"An Ordinance of the Board of Directors of Carpinteria County Water District Ordering and Calling a Special Election to Be Held in Said Carpinteria County Water District on Tuesday, the 22nd Day of November, 1949, for the Purpose of Submitting to the Qualified Electors of and in Said Carpinteria County Water District at Said Special Election an Ordinance for Enactment by Said Qualified Electors, Which Ordinance Shall Be Entitled:

'An Ordinance of Carpinteria County Water District Authorizing and Directing the Proper Officers of Carpinteria County Water District to Execute and Enter Into a Contract With the Santa Barbara [fol. 35] County Water Agency for the Furnishing by the Santa Barbara County Water Agency to Said Carpinteria County Water District of a Water Supply From Cachuma Unit to and for the Use and Benefit of Said Carpinteria County Water District, for Which Said Carpinteria County Water District Will Make Payment to the Santa Barbara County Water Agency or to the United States, Upon the Bases, at the Rates and Pursuant to and Under the Terms and Conditions of the Aforementioned Contract.'"

calling a special election to be held within said District last mentioned on November 22, 1949, for the purpose of submitting to the qualified electors in said District the following proposition:

"Shall the Ordinance Entitled: 'An Ordinance of Carpinteria County Water District Authorizing and Directing the Proper Officers of Carpinteria County Water District to Execute and Enter Into a Contract With the Santa Barbara County Water Agency for

the Furnishing by the Santa Barbara County Water Agency to Said Carpinteria County Water District of a Water Supply From Cachuma Unit to and for the Use and Benefit of Said Carpinteria County Water [fol. 36] District, for Which Said Carpinteria County Water District Will Make Payment to the Santa Barbara County Water Agency or to the United States, Upon the Bases, at the Rates and Pursuant to and Under the Terms and Conditions of the Aforementioned Contract.' Hereby Submitted to the Qualified Electors of Said Carpinteria County Water District for Voting Thereon by Said Qualified Voters Be Enacted by and for Said Carpinteria County Water District, Said Ordinance Containing Said Contract Being Set Forth in Full in Ordinance No. 1 Adopted by the Board of Directors of Carpinteria County Water District at Its Meeting Held the 26th Day of September, 1949"

VII

Notice of said special election was thereafter given in all respects for the time and in the manner prescribed by the laws of the State of California in such cases made and provided and by said Ordinance No. 1, and said notices of election as published and posted contained and set forth a full, true and correct copy of the ordinance submitted to said qualified electors of said Carpinteria County Water District, and a full, true and correct copy of said last-mentioned contract referred to in the proposition to be submitted to said qualified electors; and the Secretary of said District did, within ten (10) days prior to said [fol. 37] election, mail to each registered voter in said District, a sample ballot and polling place card in the form prescribed by law and said Ordinance No. 1, and a full, true and correct copy of said proposed ordinance containing a full, true and correct copy of said last-mentioned contract referred to in the proposition to be submitted to said qualified electors of said Carpinteria County Water District.

VIII

That on the 22nd day of November, 1949, pursuant to said Ordinance No. 1, a special election was held in said Carpinteria County Water District, at which there was submitted to the qualified electors of said District the proposition set forth in Paragraph VI of this Second Cause of Action. Said special election was in all respects carried on and conducted as required by the laws of the State of California and by said Ordinance No. 1.

IX

That on the 28th day of November, 1949, being the first Monday after said special election, the Board of Directors of said Carpinteria County Water District, at a duly and regularly called, noticed and held special meeting of said Board, duly and regularly held on said day at the aforesaid usual and regular place of meeting of said Board, four of the five members of said Board being present, did duly and regularly meet as a canvassing board, and all said members present voting therefor, did duly and regu- [fol. 38] larly canvass the returns of said election and did duly and regularly make and enter in the records of said Board its finding and statement that the whole number of votes cast in said Carpinteria County Water District at said election was 935, and that of the total number of votes so cast, 738 votes were cast for said proposition and 197 votes were cast against said proposition, and that said proposition was duly carried and approved by the electors of said Carpinteria County Water District, that said proposed ordinance was duly enacted by the electors of said Carpinteria County Water District and the execution of said proposed contract was duly authorized by said electors of said Carpinteria County Water District.

Third Cause of Action

For a Further, Third and Separate Cause of Action Plaintiff Alleges:

I

Plaintiff hereby refers to the foregoing First Cause of Action, and thereby incorporates the same hereat by reference as if it were herein fully set forth.

II

That the Defendants in this cause of action, in addition to those specified in Paragraph IV of said First Cause of Action, are as follows: All persons and parties who have any interest in, or who are interested in, or are to be interested in, or claim to have any interest in: That certain [fol. 39] contract dated September 12, 1949, by and between the Santa Barbara County Water Agency and the Goleta County Water District, a county water district, entitled "Contract for the Furnishing of Water to Goleta County Water District", which contract was executed by the Santa Barbara County Water Agency September 12, 1949, and by the Goleta County Water District on December 1, 1949, or the proceedings of the Board of Directors of the Goleta County Water District or the proceedings of the Goleta County Water District, or the proceedings of the Board of Directors of said Santa Barbara County Water Agency or the proceedings of said Santa Barbara County Water Agency leading up to and including the making of said last-mentioned contract or the validity of the provisions of said contract, or in the proceedings had for the organization of said Santa Barbara County Water Agency or said Goleta County Water District; and all persons or parties who have any interest in, or who are interested in, or claim to have any interest in or lien or claim upon the property within said Santa Barbara County Water Agency or any part thereof or within said Goleta County Water District, or any part thereof; and all property within said Goleta County Water District.

III

That continuously at all times herein mentioned the Goleta County Water District was and now is a county water district duly organized and existing under and by virtue of that certain Act of the Legislature of the State [fol. 40] of California, known as the "County Water District Act", being Chapter 592 of the Statutes of the 40th Session of the California Legislature, approved June 10, 1913 (1913 California Statutes, Chapter 592) and acts amendatory thereof and supplementary thereto, which acts,

since October 1, 1949, constitute Division 12 of the Water Code of California, which Division, since said latter date, is known as "The County Water District Law".

IV

That continuously at all times herein mentioned since January 3, 1949, Benjamin Hartman, Dee Dominic Pagliotti, Chester Rich, George W. Smith and Fred G. Stevens, constituted and now are the whole of the Board of Directors of said Goleta County Water District; and that continuously at all times in this paragraph mentioned, Fred G. Stevens and James Marchiando have been and now are, respectively, the President and Secretary of said Goleta County Water District.

V

That at all times herein mentioned the aforesaid President and Secretary of said District last mentioned were the proper officers of said Goleta County Water District to execute and enter into the aforementioned contract, designated herein as Exhibit "F", for and on behalf of Goleta County Water District.

VI

That on September 26, 1949, the Board of Directors of [fol. 41] said Goleta County Water District, at a duly and regularly called, noticed and held special meeting of said Board on said day, at the aforesaid usual and regular place of meeting of said Board, all five members of said Board being present and voting therefor, did duly and regularly pass, adopt and enact an ordinance (being Ordinance No. 1) entitled:

> "An Ordinance of the Board of Directors of Goleta County Water District Ordering and Calling a Special Election to Be Held in Said Goleta County Water District on Tuesday, the 22nd Day of November, 1949, for the Purpose of Submitting to the Qualified Electors of and in Said Goleta County Water District at Said Special Election an Ordinance for Enactment

by Said Qualified Electors, Which Ordinance Shall Be Entitled:

'An Ordinance of Goleta County Water District Authorizing and Directing the Proper Officers of Goleta County Water District to Execute and Enter Into a Contract With the Santa Barbara County Water Agency for the Furnishing by the Santa Barbara County Water Agency to Said Goleta County Water District of a Water Supply From Cachuma Unit to and for the Use and Benefit of [fol. 42] Said Goleta County Water District, for Which Said Goleta County Water District Will Make Payment to the Santa Barbara County Water Agency or to the United States, Upon the Bases, at the Rates and Pursuant to and Under the Terms and Conditions of the Aforementioned Contract.'"

calling a special election to be held within said District last mentioned on November 22, 1949, for the purpose of submitting to the qualified electors in said District the following proposition:

"Shall the Ordinance Entitled: 'An Ordinance of Goleta County Water District Authorizing and Directing the Proper Officers of Goleta County Water District to Execute and Enter Into a Contract With the Santa Barbara County Water Agency for the Furnishing by the Santa Barbara County Water Agency to Said Goleta County Water District of a Water Supply From Cachuma Unit to and for the Use and Benefit of Said Goleta County Water District, for Which Said Goleta County Water District Will Make Payment to the Santa Barbara County Water Agency or to the United States, Upon the Bases, at the Rates and Pursuant to and Under the Terms and [fol. 43] Conditions of the Aforementioned Contract.' Hereby Submitted to the Qualified Electors of Said Goleta County Water District for Voting Thereon by Said Qualified Voters Be Enacted by and for Said Goleta County Water District, Said Ordinance Containing Said Contract Being Set Forth in Full in

Ordinance No. 1 Adopted by the Board of Directors of Goleta County Water District at Its Meeting Held the 26th Day of September, 1949"

VII

Notice of said special election was thereafter given in all respects for the time and in the manner prescribed by the laws of the State of California in such cases made and provided and by said Ordinance No. 1, and said notices of election as published and posted contained and set forth a full, true and correct copy of the ordinance submitted to said qualified electors of said Goleta County Water District, and a full, true and correct copy of said last-mentioned contract referred to in the proposition to be submitted to said qualified electors; and the Secretary of said District did, within ten (10) days prior to said election, mail to each registered voter in said District, a sample ballot and polling place card in the form prescribed by law and said Ordinance No. 1, and a full, true and correct copy of said proposed ordinance containing a full, true and correct copy of said last-mentioned contract referred [fol. 44] to in the proposition to be submitted to said qualified electors of said Goleta County Water District.

VIII

That on the 22nd day of November, 1949, pursuant to said Ordinance No. 1, a special election was held in said Goleta County Water District, at which there was submitted to the qualified electors of said District the proposition set forth in Paragraph VI of this Third Cause of Action. Said special election was in all respects carried on and conducted as required by the laws of the State of California and by said Ordinance No. 1.

IX

That on the 28th day of November, 1949, being the first Monday after said special election, the Board of Directors of Goleta County Water District met at a duly and regularly called, noticed and held special meeting of said Board, duly and regularly held on said day at the aforesaid usual

and regular place of meeting of said Board, all members of said Board being present, did duly and regularly meet as a canvassing board, and all absentee ballots not being yet received, and all said members present voting therefor, did duly and regularly adjourn said meeting as a canvassing board to Tuesday, November 29, 1949, at the aforesaid usual and regular place of meeting of said Board. At said last-mentioned time and place, pursuant to said order of [fol. 45] adjournment, said Board of Directors, all members being present, did duly and regularly meet as such canvassing board, and all members present voting therefor, did duly and regularly canvass the returns of said election and did duly and regularly make and enter in the records of said Board its finding and statement that the whole number of votes cast in said Goleta County Water District at said election was 1,774, and that of the total number of votes so cast, 1,642 votes were cast for said proposition and 132 votes were cast against said proposition, and that said proposition was duly carried and approved by the electors of said Goleta County Water District, that said proposed ordinance was duly enacted by the electors of said Goleta County Water District and the execution of said proposed contract was duly authorized by said electors of said Goleta County Water District.

Fourth Cause of Action

For a Further, Fourth and Separate Cause of Action Plaintiff Alleges:

I

Plaintiff hereby refers to the fofegoing First Cause of Action, and thereby incorporates the same hereat by reference as if it were herein fully set forth.

II

That the Defendants in this cause of action, in addition to those specified in Paragraph IV of said First Cause of [fol. 46] Action, are as follows: All persons and parties who have any interest in, or who are interested in, or are to be interested in, or claim to have any interest in: That certain contract dated September 12, 1949, by and between

the Santa Barbara County Water Agency and the Montecito County Water District, a county water district, entitled "Contract for the Furnishing of Water to Montecito County Water District", which contract was executed by the Santa Barbara County Water Agency September 12, 1949, and by the Montecito County Water District on December 8, 1949, or the proceedings of the Board of Directors of the Montecito County Water District or the proceedings of the Montecito County Water District, or the proceedings of the Board of Directors of said Santa Barbara County Water Agency or the proceedings of said Santa Barbara County Water Agency leading up to and including the making of said last-mentioned contract or the validity of the provisions of said contract, or in the proceedings had for the organization of said Santa Barbara County Water Agency or said Montecito County Water District; and all persons or parties who have any interest in, or who are interested in, or claim to have any interest in or lien or claim upon the property within said Santa Barbara County Water Agency, or any part thereof, or within said Montecito County Water District, or any part thereof; and all property within said Santa Barbara County Water Agency of said Montecito County Water District.

[fol. 47]

III

That continuously at all times herein mentioned the Montecito County Water District was and now is a county water district duly organized and existing under and by virtue of that certain Act of the Legislature of the State of California, known as the "County Water District Act", being Chapter 592 of the Statutes of the 40th Session of the California Legislature, approved June 10, 1913 (1913 California Statutes, Chapter 592) and acts amendatory thereof and supplementary thereto, which acts, since October 1, 1949, constitute Division 12 of the Water Code of California, which Division, since said latter date, is known as "The County Water District Law".

IV

That continuously at all times herein mentioned since January 3, 1949, Harry P. Drake, Arthur E. Ogilvy, John

A. Parma, Hewitt Reynolds and Laselle Thornburgh constituted and now are the whole of the Board of Directors of said Montecito County Water District; and that continuously at all times in this paragraph mentioned, Harry P. Drake and Martha G. Evans have been and now are, respectively, the President and Secretary of said Montecito County Water District.

V

That at all times herein mentioned the aforesaid President and Secretary of said District last mentioned were the proper officers of said Montecito County Water District [fol. 48] to execute and enter into the aforementioned contract, designated herein as Exhibit "G", for and on behalf of Montecito County Water District.

VI

That on September 26, 1949, the Board of Directors of said Montecito County Water District, at a duly and regularly called, noticed and held special meeting of said Board on said day, at the aforesaid usual and regular place of meeting of said Board, four of the members of said Board being present and voting therefor, did duly and regularly pass, adopt and enact an ordinance (being Ordinance No. 26) entitled:

"An Ordinance of the Board of Directors of Montecito County Water District Ordering and Calling a Special Election to Be Held in Said Montecito County Water District on Tuesday, the 22nd Day of November, 1949, for the Purpose of Submitting to the Qualified Electors of and in Said Montecito County Water District at Said Special Election an Ordinance for Enactment by Said Qualified Electors, Which Ordinance Shall Be Entitled:

'An Ordinance of Montecito County Water District Authorizing and Directing the Proper Officers of Montecito County Water District to Execute and Enter Into a Contract With the Santa Barbara [fol. 49] County Water Agency for the Furnishing

by the Santa Barbara County Water Agency to Said Montecito County Water District of a Water Supply From Cachuma Unit to and for the Use and Benefit of Said Montecito County Water District, for Which Said Montecito County Water District Will Make Payment to the Santa Barbara County Water Agency or to the United States, Upon the Bases, at the Rates and Pursuant to and Under the Terms and Conditions of the Aforementioned Contract.'"

calling a special election to be held within said District last mentioned on November 22, 1949, for the purpose of submitting to the qualified electors in said District the following proposition:

"Shall the Ordinance Entitled: 'An Ordinance of Montecito County Water District Authorizing and Directing the Proper Officers of Montecito County Water District to Execute and Enter Into a Contract With the Santa Barbara County Water Agency for the Furnishing by the Santa Barbara County Water Agency to Said Montecito County Water District of a Water Supply From Cachuma Unit to and for the Use [fol. 50] and Benefit of Said Montecito County Water District, for Which Said Montecito County Water District Will Make Payment to the Santa Barbara County Water Agency or to the United States, Upon the Bases, at the Rates and Pursuant to and Under the Terms and Conditions of the Aforementioned Contract.' Hereby Submitted to the Qualified Electors of Said Montecito County Water District for Voting Thereon by Said Qualified Voters Be Enacted by and for Said Montecito County Water District, Said Ordinance Containing Said Contract Being Set Forth in Full in Ordinance No. 26 Adopted by the Board of Directors of Montecito County Water District at Its Meeting Held the 26th Day of September, 1949"

VII

Notice of said special election was thereafter given in all respects for the time and in the manner prescribed by

the laws of the State of California in such cases made and provided and by said Ordinance No. 26, and said notices of election as published and posted contained and set forth a full, true and correct copy of the ordinance submitted to said qualified electors of said Montecito County Water District, and a full, true and correct copy of said last-mentioned contract referred to in the proposition to be submitted to said qualified electors; and the Secretary of said District did, within ten (10) days prior to said election, [fol. 51] mail to each registered voter in said District a sample ballot and polling place card in the form prescribed by law and said Ordinance No. 26, and a full, true and correct copy of said proposed ordinance containing a full, true and correct copy of said last-mentioned contract referred to in the proposition to be submitted to said qualified electors of said Montecito County Water District.

VIII

That on the 22nd day of November, 1949, pursuant to said Ordinance No. 26, a special election was held in said Montecito County Water District, at which there was submitted to the qualified electors of said District the proposition set forth in Paragraph VI of this Fourth Cause of Action. Said special election was in all respects carried on and conducted as required by the laws of the State of California and by said Ordinance No. 26.

IX

That on the 28th day of November, 1949, being the first Monday after said special election, the Board of Directors of said Montecito County Water District, at a duly and regularly called, noticed and held special meeting of said Board, duly and regularly held on said day at the aforesaid usual and regular place of meeting of said Board, three of the five members of said Board being present, did duly meet as a canvassing board and all said members present voting therefor, did duly and regularly canvass the returns of said election and did duly and regularly [fol. 52] make and enter in the records of said Board its

finding and statement that the whole number of votes cast in said Montecito County Water District at said election was 1,490, and that of the total number of votes so cast, 1,294 votes were cast for said proposition and 196 votes were cast against said proposition, and that said proposition was duly carried and approved by the electors of said Montecito County Water District, that said proposed ordinance was duly enacted by the electors of said Montecito County Water District and the execution of said proposed contract was duly authorized by said electors of said Montecito County Water District.

Fifth Cause of Action

For a Further, Fifth and Separate Cause of Action Plaintiff Alleges:

I

Plaintiff hereby refers to the foregoing First Cause of Action, and thereby incorporates the same hereat by reference as if it were herein fully set forth.

II

That the Defendants in this cause of action, in addition to those specified in Paragraph VI of said First Cause of Action, are as follows: All persons and parties who have any interest in, or who are interested in, or are to be interested in, or claim to have any interest in: That cer- [fol. 53] tain contract dated December 8, 1949, by and between the Santa Barbara County Water Agency and the Summerland County Water District, a county water district, entitled "Contract for the Furnishing of Water to Summerland County Water Agency", which contract was executed by the Santa Barbara County Water Agency September 12, 1949, and by the Summerland County Water District on December 8, 1949, or the proceedings of the Board of Directors of the Summerland County Water District or the proceedings of the Summerland County Water District, or the proceedings of the Board of Directors of said Santa Barbara County Water Agency or the proceedings of said Santa Barbara County Water Agency leading up to and including the making of said last-mentioned con-

tract or the validity of the provisions of said contract, or in the proceedings had for the organization of said Santa Barbara County Water Agency or said Summerland County Water District; and all persons and parties who have any interest in, or who are interested in, or claim to have any interest in or lien or claim upon the property within said Santa Barbara County Water Agency, or any part thereof, or within said Summerland County Water District, or any part thereof; and all property within said Santa Barbara County Water Agency and said Summerland County Water District.

III

That continuously at all times herein mentioned the Summerland County Water District was and now is a county [fol. 54] water district duly organized and existing under and by virtue of that certain Act of the Legislature of the State of California, known as the "County Water District Act", being Chapter 592 of the Statutes of the 40th Session of the California Legislature, approved June 10, 1913 (1913 California Statutes, Chapter 592) and acts amendatory thereof and supplementary thereto, which acts, since October 1, 1949, constitute Division 12 of the Water Code of California, which Division, since said latter date, is known as "The County Water District Law".

IV

That continuously at all times herein mentioned since January 3, 1949, Ralph C. Bromwell, Harold A. Irwin, Cecil E. Lambert, Ernest A. McCurry and G. Blanchard Tucker constituted and now are the whole of the Board of Directors of said Summerland County Water District; and that continuously at all times in this paragraph mentioned, Cecil E. Lambert and W. M. Kirkwood have been and now are, respectively, the President and Secretary of said Summerland County Water District.

V

That at all times herein mentioned the aforesaid President and Secretary of said District last mentioned were the

proper officers of said Summerland County Water District to execute and enter into the aforementioned contract, designated herein as Exhibit "H", for and on behalf of [fol. 55] Summerland County Water District.

VI

That on September 26, 1949, the Board of Directors of said Summerland County Water District, at a duly and regularly called, noticed and held special meeting of said Board on said day, at McCurry's Chevron Gasoline Station in said District, four of the five members of said Board being present and voting therefor, did duly and regularly pass, adopt and enact an ordinance (being Ordinance No. 1) entitled:

> "An Ordinance of the Board of Directors of Summerland County Water District ordering and calling a special election to be held in said Summerland County Water District on November 22nd, 1949, for the purpose of submitting to the qualified electors of and in said Summerland County Water District at said special election an ordinance for enactment by said qualified electors, which ordinance shall be entitled:
>
> 'An ordinance of Summerland County Water District authorizing the proper officers of Summerland County Water District to execute and enter into a contract with the Santa Barbara County Water Agency for the furnishing by the Santa Bar- [fol. 56] bara County Water Agency to said Summerland County Water District of a Water supply from Cachuma unit to and for the use and benefit of said Summerland County Water District, for which said Summerland County Water District will make payment to the Santa Barbara County Water Agency or to the United States upon the bases, at the rates and pursuant to and under the terms and conditions of the aforementioned contract.'"

calling a special election to be held within said District last mentioned on November 22, 1949, for the purpose of

submitting to the qualified electors in said District the following proposition:

"Shall the ordinance entitled:

'An ordinance of Summerland County Water District authorizing and directing the proper officers of Summerland County water District to execute and enter into a contract with the Santa Barbara County Water Agency for the furnishing by the Santa Barbara County Water Agency to said Summerland County Water District of a water supply from Cachuma unit to and for the use and benefit of said Summerland County Water District, for which said Summerland County Water District will make payment to the Santa [fol. 57] Barbara County Water Agency or to the United States, upon the bases, at the rates and pursuant to and under the terms and conditions of the aforementioned contract.'

Hereby submitted to the qualified electors of said Summerland County Water District for voting thereon by said qualified electors be enacted by and for said Summerland County Water District, said ordinance containing said contract being set forth in full in Ordinance No. 1 adopted by the Board of Directors of Summerland County Water District at its meeting held the 26th day of September, 1949."

VII

Notice of said special election was thereafter given in all respects for the time and in the manner prescribed by the laws of the State of California in such cases made and provided and by said Ordinance No. 1, and the Secretary of said District did, within ten (10) days prior to said election, mail to each registered voter in said District, a sample ballot and polling place card in the form prescribed by law and said ordinance, and a full, true and correct copy of said proposed ordinance containing a full, true and correct copy of said last-mentioned contract referred to in the proposition to be submitted to said qualified electors of said Summerland County Water District.

[fol. 58]

VIII

That on the 22nd day of November, 1949, pursuant to said Ordinance No. 1, a special election was held in said Summerland County Water District, at which there was submitted to the qualified electors of the said District the proposition set forth in Paragraph VI of this Fifth Cause of Action. Said special election was in all respects carried on and conducted as required by the laws of the State of California and by said Ordinance No. 1.

IX

That on the 28th day of November, 1949, being the first Monday after said special election, the Board of Directors of said Summerland County Water District, at a duly and regularly called, noticed and held special meeting of said Board, duly and regularly held on said day at the aforesaid usual and regular place of meeting of said Board, three members of said Board being present, did duly and regularly meet as a canvassing board and all said members present voting therefor, did duly and regularly canvass the returns of said election and did duly and regularly make and enter in the records of said Board its finding and statement that the whole number of votes cast in said Summerland County Water District at said election was 177, and that of the total number of votes so cast, 146 votes were cast for said proposition and 31 votes were cast against said proposition, and that said proposition was duly carried and approved by the electors of said Summer-

[fol. 59] land County Water District, that said proposed ordinance was duly enacted by the electors of said Summerland County Water District and the execution of said proposed contract was duly authorized by said electors of said Summerland County Water District.

notice of the exercise of such option for any year shall be furnished to the United States by the Agency on or before March 1 of the preceding year.

(c) While the Cachuma Unit has been designed and this [fol. 83] contract has been executed to serve the present and future reasonable beneficial needs and uses of the member units, there may be temporarily available at times, for reasons beyond the control of the contracting parties, quantities of water in excess of the amounts necessary for the United States to meet its obligations under this contract. Each year in which there is such surplus water available from Cachuma Unit, as determined by the contracting officer, the United States shall offer, at rates not to exceed those specified in Article 13 hereof, such water to the Agency for furnishing to member units, including Santa Ynez. The Agency may purchase during any such year all or part of such water: *Provided*, That in the event the Agency does not indicate in writing its desire to accept and pay for such surplus water for a member unit within sixty (60) days after receiving written notice from the United States of its availability, the Agency's right to purchase such water during the respective year shall terminate: *Provided, further*, That in the event the United States in any year sells or furnishes any such surplus water to others than a member unit, such water will not be sold at a rate which is less than that offered to the Agency. The contract between the United States and such other party shall expressly provide that the Agency and the member units shall have a prior right to such water in the event of a shortage and that the right of further service to such other party [fol. 84] shall be subject to the present and future needs of the member units for quantities of water in excess of those stipulated herein. Each such contract between the United States and party other than the Agency and a member unit shall be for a term of no longer than one year. Revenues derived by the United States in excess of the costs of operation and maintenance from the sale of all such surplus water shall be credited to the construction cost of the Cachuma Unit.

TIME FOR DELIVERY OF WATER

12. (a) On or before March 15, preceding each year during the interim period the contracting officer shall notify the Agency in writing of his estimate of the quantity of water which will be available from the Cachuma Unit during the ensuing year, which estimate may be revised from time to time by the contracting officer during such year.

(b) Except as provided in subdivision (c) of this article, the Agency shall submit in writing to the contracting officer on or before March 15 of each year during the term of this contract a schedule, subject to the provisions of Article 11 hereof and in form satisfactory to the contracting officer, indicating the desired times and quantities for the delivery of water to each member unit pursuant to said Article 11 during the following year. The United States shall, within the provisions hereof, make all reasonable [fol. 85] effort to deliver said water in accordance with said schedule, or any revision thereof submitted by the Agency within a reasonable time before the desired change, if any, of time for delivery. If in any year during the interim period the contracting officer revises his estimate of the quantity of water which will be available from the Cachuma Unit during such year, he shall so inform the Agency in writing, and the Agency within a reasonable time thereafter may revise its schedule to avail member units of any increased supply of water or to conform with any decreased supply of water.

(c) The contracting officer, within a reasonable time after he is able to do so, shall notify the Agency in writing of his estimate of the quantity of water which will be available from the Cachuma Unit during the portion of the interim period beginning with the initial delivery date and ending on the following May 15 and the Agency, within a reasonable time after receipt by it of such notice, shall submit a schedule indicating the desired times and quantities for the delivery of water for such portion of the interim period.

RATE AND METHOD OF PAYMENT FOR WATER

13. (a) Each year during the term of this contract the contracting officer shall, on or before December 1, preceding each such year, notify the Agency in writing of the rates for water to be furnished by the United States to each member unit pursuant to this contract during such year. In no event shall the rates so announced by the contracting [fol. 86] officer for any water for any year during the term of this contract be in excess of ten dollars ($10) per acre-foot for irrigation water for Santa Ynez, twenty-five dollars ($25) per acre-foot for irrigation water for Goleta, Summerland, Montecito and Carpinteria, and thirty-five dollars ($35) per acre-foot for municipal water: *Provided*, That neither the rates for irrigation water nor municipal water shall include an interest component. In the event the contracting officer announces rates for any year which are less than the maximum rates herein provided for, the rates so announced shall be in the ratio of thirty-five dollars ($35) per acre-foot for municipal water, twenty-five dollars ($25) per acre-foot for irrigation water for Summerland, Carpinteria, Goleta and Montecito, and ten dollars ($10) per acre-foot for irrigation water for Santa Ynez.

(b) Notwithstanding any other provisions of this contract:

(i) The rate fixed pursuant to subdivision (a) of this article for municipal water shall be paid by the Agency to the United States for all water furnished by the United States pursuant to this contract to member units which is delivered to users within or used within boundaries of any incorporated city;

(ii) The rates for irrigation water for the respective member units, fixed as provided in subdivision (a) of this [fol. 87] article, shall be paid by the Agency for all water furnished to member units other than Santa Barbara: *Provided*, That whenever there shall exist within Goleta, Summerland, Montecito, Carpinteria, or Santa Ynez a municipal area or municipal areas as hereinafter defined, then, during the period that such municipal area or municipal areas exist within such member unit, the Agency shall pay

to the United States for the water furnished by the United States to such member unit upon the following basis:

A. The rate fixed for municipal water, as provided in subdivision (a) of this article, shall be paid by the Agency to the United States for that portion of the total quantity of water required to be furnished to the member unit by the United States during the respective year, pursuant to Article 11 hereof, which bears the same ratio to such total quantity of water required to be delivered, as aforesaid, to the respective member unit during such year as the aggregate acreage of municipal areas within such member unit bears to the total acreage of such member unit, and the remaining portion of the water furnished or to be furnished hereunder by the United States during such year shall be paid by the Agency at the rate fixed, as provided in subdivision (a) of this article, for irrigation water for such member unit.

[fol. 88] B. After receipt by the Agency of the notice furnished by the contracting officer pursuant to Article 12(c) hereof and before the intial delivery date, and not less than sixty (60) days prior to and not sooner than one hundred and eighty (180) days prior to each period, the Agency shall determine with respect to each member unit, except Santa Barbara, from the records of such member unit whether there exists within the member unit an area of not less than three hundred (300) contiguous acres of land in which there exists an average of more than one water consumer service connection per acre. If any such area or areas are found by the Agency to exist, each such area shall be designated by the Agency as a "municipal area" and shall be given a suitable name, which shall be chosen by the governing body of the member unit in which said municipal area is found to exist, and the Agency promptly will notify the United States thereof. No area within one municipal area shall be included within any other municipal area. Each municipal area so designated by the Agency prior to the initial delivery date shall for the purposes of this agreement be deemed to

be a municipal area during the interim period and each municipal area so designated by the Agency as herein provided during or after the interim period shall be [fol. 89] deemed a municipal area for the period next commencing after such determination, it being intended that after the interim period no such determination shall be effective for more than one period.

(c) The Agency will collect from each member unit or units for water required to be furnished by the United States to such member unit pursuant to Article 11 of this contract. Each year the Agency will pay to the United States in advance of the delivery of water to a member unit the amount due to the United States for the quantity of water to be delivered to the member unit during such year. Such payment shall be made by the Agency on or before May 15 or such other date, prior to the time for the commencement of delivery of water to the respective member unit of the respective year, as may be specified by the contracting officer in written notice to the Agency.

(d) In the event the Agency or any member unit fails or refuses to accept delivery of water available for delivery to such member unit pursuant to this contract, or in the event the Agency in any year during the first through the seventh periods fails to submit a schedule for delivery as provided in Article 12 of this contract, said failure or refusal shall not relieve the Agency of its obligation to pay for said water and the Agency agrees to collect from the [fol. 90] member unit or units and to make payment therefor to the United States in the same manner as if said water had been delivered to and accepted by the member unit or member units in accordance with this contract.

POINTS OF DELIVERY, MEASUREMENT, AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

14. (a) All water for Santa Ynez will be delivered to Santa Ynez at the lower end of the outlet from Cachuma Dam.

(b) All water for Goleta, Summerland, Montecito, Carpinteria and Santa Barbara will be delivered at South Coast

conduit at such points within the boundaries of the Agency as may be mutually agreed upon by the contracting officer and the Agency in writing: *Provided*, That in the event the United States shall have reached the construction of the portion of said conduit, which probably will embrace such points, and the location has not been so agreed upon, such points shall be established at locations as in the determination of the contracting officer will best serve the needs of the member units.

(c) All water delivered pursuant to this contract shall be measured by the United States at each point of delivery established pursuant to subdivisions (a) and (b) of this article and with equipment installed, operated and maintained by the United States. Upon the request of the Agency or any member unit, the accuracy of such measurements [fol. 91] will be investigated by the contracting officer and any errors appearing therein adjusted.

(d) The United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water which has been delivered to member units hereunder by the United States nor for damage or claim of damage of any nature whatsoever for which there is legal responsibility, including, but not limited to, property damage, personal injury, or death, arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water; *Provided*, That the United States reserves the right to all waste, seepage, and return flow water, except sewage water, derived from water furnished hereunder to the Agency and member units and which escapes or is discharged beyond the Agency's boundaries and nothing herein shall be construed as an abandonment or relinquishment by the United States of any such water, but this shall not be construed as claiming for the United States any right, as waste, seepage, or return flow, to water being used pursuant to this contract for surface irrigation or underground storage within the Agency's boundaries by the Agency or by any member unit or those claiming by, through or under the Agency or any member unit.

UNITED STATES NOT LIABLE FOR WATER SHORTAGE

15. (a) There may occur at times a shortage during any year in the quantity of water available for furnishing to [fol. 92] member units by the United States pursuant to this contract through and by means of the Cachuma Unit and in no event shall any liability accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising from a shortage on account of drought, unavoidable causes, or errors in operation, except willful misconduct or gross negligence. In any year in which there may occur a shortage from any cause, the United States shall apportion the available water supply among the member units entitled, under existing and future contracts, to receive water from Cachuma Unit in accordance with conclusive determination of the contracting officer as follows:

(i) A determination shall be made of the total quantity of water from Cachuma Unit agreed to be furnished by the United States during the respective year under this contract to all member units, including the amount of water with respect to which the Agency has exercised its option pursuant to Article 11(b)(vi) for such year for Santa Ynez, the amount so determined being herein referred to as the contractual commitments.

(ii) A determination shall be made of the total quantity of water which is available to the United States from Cachuma Unit for meeting contractual commitments, the amount so determined being herein referred to as the available supply.

[fol. 93] (iii) The total quantity of water agreed to be furnished to each member unit during the respective year, under Article 11 hereof, shall be divided by the contractual commitments, the quotient thus obtained being herein referred to as the contractual entitlement.

(iv) The available supply shall be multiplied by the contractual entitlement of each member unit and the result shall be the quantity of water required to be delivered by the United States to the respective mem-

ber unit during such year, but in no event shall such quantity exceed the total quantity of water agreed to be furnished to such member unit and paid for by the Agency pursuant to Article 11 hereof.

In so far as determined by the contracting officer to be practicable, the United States will, in the event a shortage appears probable, notify the Agency of such determinations in advance of the irrigation season. In the event that in any year there is delivered to any member unit or units, by reason of any such shortage or apportionment, or any failure, discontinuance, or reduction of service as set forth in subdivisions (b) or (c) of this article, less than the quantity of water which any member unit otherwise would have been entitled to receive under the contract and for which payment has been made by the Agency to the United States, the amount of any such overpayment shall be applied first [fol. 94] to any accrued indebtedness arising out of this contract by the Agency to the United States for the respective member unit, and any amount of such overpayment then remaining shall, at the option of the Agency, be refunded or credited upon amounts to become due to the United States from the Agency under the provisions of this contract in the ensuing year for the respective member unit. To the extent of such deficiency arising from errors in operation, or drought or other unavoidable causes or any discontinuance or reduction of service as set forth in subdivision (c) of this article, such adjustment shall constitute the sole remedy of the Agency or any one having or claiming to have by, through, or under the Agency the right to the use of any of the water supply provided for herein.

(b) Notwithstanding any provision of this contract to the contrary, the United States shall not be obligated to furnish water to any member unit pursuant to this contract unless and until the construction by the United States of facilities to the extent required for the furnishing of the water to the respective member unit has been completed as conclusively determined by the contracting officer.

(c) The United States may temporarily discontinue or reduce the amount of water to be furnished to any member

unit or units as herein provided for the purposes of such maintenance, repair, or replacement and investigations and [fol. 95] inspections in connection therewith and preliminary thereto as may be necessary of any of the project facilities necessary for the furnishing of water to the member unit or any part thereof but so far as feasible the United States will give the Agency due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. In the event of any such discontinuance or reduction, the United States will, upon the resumption of service, deliver, as nearly as may be feasible, the quantity of water which would have been furnished to the member unit or units in the absence of such contingency.

STORAGE OF WATER

16. To the extent that storage space is available therefor, the United States, upon the request of any member unit, shall withhold delivery of and store in Cachuma Reservoir for and on behalf of such member unit any water required to be furnished to the member unit by the United States pursuant to this contract: *Provided*, That in the event any water is so stored and it becomes necessary to release water from Cachuma Reservoir because of the lack of storage capacity or for the purposes of repair or maintenance, or in the event that water spills over Cachuma Dam, all water so released or spilled shall be deemed to be water stored by member units: *Provided, further*, That the quantity of water which seeps or evaporates from Cachuma Reservoir shall be determined by the contracting officer and from the [fol. 96] water stored by member units there shall be deducted an amount of water which bears the same ratio to the total amount of such loss as the amount of water stored by member units bears to the total amount of water in the Cachuma Reservoir above the invert of the mouth of Tecolote Tunnel. If two or more member units request the storage of water in Cachuma Reservoir pursuant to this article, the available storage space will be apportioned each year upon the basis of the amount of water each of such member units is entitled to receive pursuant to this contract during the year that such storage space is available,

and the release from storage of any such stored water because of the unavailability of storage space shall be upon the same proportional basis.

DISPOSITION OF WATER BY MEMBER UNITS

17. (a) Water furnished by the United States to any member unit may be delivered by such member unit to other member units without the consent of the United States: *Provided*, That if the selling member unit receives from the purchasing member unit a sum for such water which is in excess of the total amount paid or owing to the United States for such water plus the expense, if any, incurred by the selling member unit in handling such water, the Agency shall pay to the United States the amount of such excess, if any.

(b) Any water furnished by the United States pursuant to this contract to a member unit and utilized by another [fol. 97] member unit as municipal water shall be paid for by the Agency at the rate established pursuant to Article 13 for municipal water.

(c) If in any year a member unit sells water to another member unit pursuant to subdivision (a) of this article, any amounts coming due to the United States as a result thereof shall be paid by the Agency to the United States on or before June 15 of the succeeding year.

AGREED CHARGES FOR EACH MEMBER UNIT TO BE A GENERAL OBLIGATION OF SUCH MEMBER UNIT

18. The Agency shall collect from each member unit and pay to the United States the sums coming due as a result of the Agency's obligation to pay for water available for furnishing to the respective member unit pursuant to this contract notwithstanding the individual default in the payment to the member unit by individual water users of assessments, tolls, or other charges levied by or owing to the respective member unit and the Agency agrees to use all of the powers and resources available to it under the laws of the State of California and the Santa Barbara County Water Agency Act to collect the funds necessary for it to

meet its obligations to the United States under this contract. Contracts between the Agency and member units shall provide that obligations of the member unit arising out of or pursuant or incidental to this contract shall con-
[fol. 98] stitute a general obligation of such member unit and that the amounts so coming due shall constitute a general obligation of such member unit notwithstanding the individual default in the payment to the member unit by individual water users of assessments, tolls, or other charges levied by or owing to the member unit, and that the member unit agrees to use all of the powers and resources available to it under the laws of the State of California to collect the funds necessary to meet such obligations.

DEFAULTS

19. (a) Should the Agency and the member unit fail to make the payment due to the United States for water to be furnished to such member unit pursuant to this contract and the Agency and such member unit fail to levy the assessments, tolls, or other charges necessary to be levied in order for such member unit and the Agency to meet the Agency's obligation to the United States under this contract with respect to such member unit, or having levied, should the Agency and the member unit be prevented from collecting such assessments, tolls, or other charges by any judicial proceeding or otherwise fail to collect them, no tract of land within such member unit shall be entitled to receive water furnished by the United States pursuant to this contract to such member unit, except upon payment by the landowner of such assessment or toll charge.

[fol. 99] (b) No water shall be furnished to any member unit during any period in which the Agency is in arrears in the advance payment of charges accrued under this contract with respect to such member unit unless the member unit makes the necessary payment directly to the United States, in which event the Agency shall be relieved of its obligation to make such payment for such year.

(c) No water furnished by the United States to any member unit pursuant to this contract shall be furnished

by such member unit to lands or parties which are in arrears in the payment to such member unit of assessments, rates, tolls, or other charges levied or established by such member unit if such assessments, rates, tolls or other charges are necessary for the purpose of raising revenues to meet the payments then due to the United States from the Agency for the member unit for such water and each contract between the Agency and a member unit shall so provide.

(d) The United States may, at its option, terminate all rights of any member unit to be furnished water pursuant to this contract on sixty (60) days' written notice to the Agency upon the failure of the Agency for two or more successive or cumulative years to make any of the payments required in this contract to be made by the Agency to the United States upon behalf of such member unit at the times and in the manner provided if the Agency does not pay said [fol. 100] delinquent charges within such 60-day period; however, if the Agency or member unit is prevented by legal action from making such payments, the United States may not exercise its right of termination for any failure to make such payments when such failure is occasioned by such legal action, unless by the final judgment in such legal action this contract is rendered unenforceable or void. Said termination shall be effective on January 1 following the date on which such notice is given to the Agency. Upon the effective date of such termination all obligations of the United States and all rights of the Agency and the member unit with respect to such member unit, of any nature whatsoever arising under this contract, shall cease, but such termination shall not relieve the Agency of the obligation to make to the United States all such payments becoming due pursuant to this contract prior to the effective date of such termination. No waiver at any time by the United States of its rights with respect to default under any other matter arising in connection with this contract shall be deemed to be a waiver with respect to any subsequent default or matter.

LEVY OF TAXES AND ASSESSMENTS—
FIXING OF RATES AND TOLLS

20. (a) Contracts between the Agency and member units involving water made available pursuant to this contract shall provide that each member unit shall cause to be levied and collected all necessary taxes and assessments and will [fol. 101] use all of the authority and resources of the member unit to meet its obligations thereunder, to make in full all payments to be made pursuant to such contract on or before the date such payments become due and to meet its other obligations under such contract.

(b) The Agency shall use all powers and resources available to it under the Santa Barbara County Water Agency Act, including the taxing power of the Agency or the power to levy special assessments to collect and pay to the United States and make payments promptly on the due dates thereof of all amounts which the Agency by the provisions of this contract shall be obligated to pay to the United States.

PENALTY UPON DELINQUENCY IN PAYMENT.

21. Upon each charge to be paid by the Agency to the United States pursuant to this contract which shall remain unpaid after the same shall have become due and payable there shall be imposed a penalty of one-half (½) of one (1) percent per month of the amount of such delinquent payment from and after the date when the same becomes due until paid, and the Agency hereby agrees to pay said penalty.

DISTRICT TO KEEP BOOKS AND RECORDS
AND REPORT CROP AND OTHER DATA

22. The Agency shall require each member unit to establish and maintain account and other books and records, adequate to enable the Agency to furnish to the Bureau of [fol. 102] Reclamation reports and statements to such extent and in such manner and form as may be prescribed by the Secretary, of information pertaining to (a) accounts and financial transactions of the member unit, to the extent that

such information pertains to this contract and operations thereunder, and (b) crops raised and agricultural or livestock products produced on the land within the member unit, a report thereon for the preceding period of twelve (12) calendar months to be furnished to the Secretary annually on or before December 31, or such other date or dates as may be fixed by the Secretary.

INSPECTION OF BOOKS AND RECORDS

23. Subject to applicable Federal laws and regulations, the proper officers or agents of the Agency and each member unit or either of them shall have full and free access at all reasonable times to the project account books and official records of the Bureau of Reclamation, in so far as the same pertain to the matters and things provided for in this contract, with the right at any time during office hours to make copies thereof, and the proper representatives of the United States shall have similar rights in respect to the account books and records of the Agency and each member unit.

CHANGES IN ORGANIZATION OF MEMBER UNITS

24. Contracts between the Agency and member units shall provide that while this contract is in effect no change [fol. 103] will be made in any member unit, except Santa Barbara, either by inclusion or exclusion of lands, by partial or total consolidation or merger with another political subdivision of the State, by proceedings to dissolve, or otherwise, except upon the contracting officer's written assent thereto.

LANDS NOT TO RECEIVE WATER UNTIL OWNERS THEREOF EXECUTE CERTAIN CONTRACTS

25. (a) No water made available to a member unit pursuant to this contract shall be furnished to any excess land as defined in Article 27 hereof unless the owners thereof shall have executed a valid recordable contract in form prescribed by the United States agreeing to the provisions of Articles 25, 26, and 27 of this contract; agreeing to the appraisal provided for in Article 26 hereof and that such appraisal shall be made on the basis of the actual bona fide

value of such land at the date of the appraisal without reference to the construction of the Cachuma Unit, all as hereinafter provided; and agreeing to the sale of his excess lands under terms and conditions satisfactory to the Secretary and at prices not to exceed those fixed as hereinafter provided. No sale of any excess land shall carry the right to receive water made available pursuant to this contract unless and until the purchase price involved in such sale is approved by the contracting officer and upon proof of fraudulent representation as to the true consideration involved [fol. 104] in such sale the United States may instruct the member unit by written notice to refuse to deliver any water subject to this contract to the land involved in such fraudulent sale and the member unit thereafter shall not deliver said water to such land.

(b) If project water furnished by the United States to a member unit pursuant to this contract reaches the underground strata of excess land owned by a large land owner who has not executed a recordable contract and the large land owner pumps such project water from the underground, the member unit will not be deemed to have furnished such water to said lands within the meaning of this contract if such water reached the underground strata of the aforesaid excess land as an unavoidable result of the furnishing of project water to nonexcess land or to excess land with respect to which a recordable contract has been executed.

VALUATION AND SALE OF EXCESS LANDS

26. (a) The value of the excess irrigable land within each member unit, held in private ownership of a large land owner as defined in the next succeeding article hereof, for the purposes of this contract, shall be determined, subject to the approval thereof by the Secretary, by three appraisers. One of said appraisers shall be designated by the Secretary and one shall be designated by the Agency and the two appraisers so appointed shall name the third. If the appraisers so designated by the Secretary and the [fol. 105] Agency are unable to agree upon the appointment of the third, the presiding justice of Division Three of the

Second District Court of Appeal of the State of California shall be requested to designate the third appraiser.

(b) The following principles shall govern the appraisal:

(i) No value shall be given such land on account of the existing or prospective possibility of securing water from the project.

(ii) The value of improvements on the land at the time of said appraisal shall be included therein, but shall also be set forth separately in such appraisal.

(c) The cost of the first two appraisals shall be paid by the United States.

(d) Any improvements made or placed on the appraised land after the appraisal hereinabove provided for prior to sale of the land by a large land owner may be appraised in like manner.

(e) Excess irrigable lands sold by a large land owner within any member unit shall not carry the right to receive water made available hereunder for such land and the Agency shall require each member unit to agree to refuse to deliver or permit the delivery of such water to land so sold until, in addition to compliance with the other provisions hereof, a verified statement showing the sale price upon any such sale shall have been filed with the Agency.

[fol. 106] (f) The Agency agrees to take all reasonable steps requested by the contracting officer to ascertain the occurrence and conditions of all sales of irrigable land of large land owners in each member unit and annually to inform the United States concerning the same.

(g) A true copy of this contract and of each appraisal made pursuant thereto shall be maintained on file in the office of the Agency and in the office of each member unit and like copies shall be kept in such principal office of the Bureau of Reclamation as may be established hereafter in connection with the project and shall be made available for examination during the usual office hours by all persons who may be interested therein.

Sixth Cause of Action

For a Further, Sixth and Separate Cause of Action Plaintiff Alleges:

I

Plaintiff hereby refers to the foregoing First Cause of Action, and thereby incorporates the same hereat by reference as if it were herein fully set forth.

II

That the defendants in this cause of action, in addition to those specified in Paragraph VI of said First Cause of Action, are as follows: All persons and parties who have any interest in, or who are interested in, or are to be interested in, or claim to have any interest in: That certain contract dated September 12, 1949, by and between the Santa Barbara County Water Agency and the City of Santa Barbara, a municipal corporation, entitled "Contract for the Furnishing of Water to the City of Santa Barbara", which contract was executed by the Santa Barbara County Water Agency September 12, 1949, and by the City of Santa Barbara on November 29, 1949, or the proceedings of the Council of the City of Santa Barbara or the proceedings of the City of Santa Barbara, or the proceedings [fol. 60] of the Board of Directors of said Santa Barbara County Water Agency or the proceedings of said Santa Barbara County Water Agency leading up to and including the making of said last-mentioned contract or the validity of the provisions of said contract, or the proceedings had for the organization of said Santa Barbara County Water Agency or said City of Santa Barbara; and all persons and parties who have any interest in, or who are interested in, or claim to have any interest in or lien or claim upon the property within said Santa Barbara County Water Agency, or any part thereof, or within the said City of Santa Barbara, or any part thereof; and all property within said Santa Barbara County Water Agency and said City of Santa Barbara.

III

That continuously at all times herein mentioned the City of Santa Barbara was and now is a municipal corporation duly organized and existing under and by virtue of the laws of the State of California.

IV

That continuously at all times herein mentioned since July 1, 1949, Floyd O. Bohnett, Bert A. Davis, Edith J. Hancock, W. Donald MacGillivray, Percy C. Heckendorf and Stewart S. Maitland constituted and now are the whole of the Council of said City of Santa Barbara, and said Floyd O. Bohnett, also known as F. O. Bohnett, Stewart S. Maitland and W. Donald MacGillivray, also known as W. D. [fol. 61] MacGillivray, constituted and now are the whole of the Finance Committee of the Council of said City; and that continuously at all times in this paragraph mentioned, Norris Montgomery, Faye Griffen and Henry T. Bailey have been and now are, respectively, the Mayor, Clerk and City Attorney of said City of Santa Barbara.

V

That at all times herein mentioned the aforesaid Mayor, Clerk, City Attorney and Finance Committee of the Council of said City were the proper officers of said City of Santa Barbara to execute and enter into the aforementioned contract, designated herein as Exhibit "D", for and on behalf of said City of Santa Barbara.

VI

That on October 6, 1949, the Council of said City of Santa Barbara, at a duly and regularly called, noticed and held regular meeting of said Council on said day, at the aforesaid usual and regular meeting place of said Board, all six members of said Council being present and voting therefor, did duly and regularly pass, adopt and enact an ordinance, which on said day was approved by said Mayor (being Ordinance No. 2253), entitled:

"An ordinance of the City of Santa Barbara, in California, ordering and calling a special municipal election to be held in said City, on Tuesday, the 22nd day of November, 1949, for the purpose of submitting to [fol. 62] the qualified electors of and in said City at said election ordered and called for said Tuesday, the 22nd day of November, 1949, a proposition for the enactment by 'direct legislation' of a proposed new ordinance entitled:

'An ordinance of the City of Santa Barbara, California, approving and entering into a contract between the Santa Barbara County Water Agency, established by Chapter 1501 of the 1945 Statutes of California, as amended, and the City of Santa Barbara, a municipal corporation of the State of California duly organized and existing under the laws thereof, for the furnishing by said Santa Barbara County Water Agency to said City of Santa Barbara, a water supply from Cachuma Unit to and for the use and benefit of said City of Santa Barbara, for which said City of Santa Barbara will make payment to said Santa Barbara County Water Agency or to the United States upon the bases, at the rates and pursuant to and under the terms and conditions of the aforementioned contract and authorizing and directing the officers of the City of Santa Barbara [fol. 63] to sign, countersign, execute, deliver and do all things necessary to enter into and consummate said contract, all in accordance to law and provisions hereof.'

Said proposition for such enactment of said proposed new ordinance being by this ordinance duly submitted without any petition therefor, by the legislative body of said City on said legislative body's own motion, to the people for their enactment by their voting thereon at said election, as allowed by law, all as required by law."

Calling a special election to be held within said City on November 22, 1949, for the purpose of submitting to the qualified electors in said City the following proposition:

"Shall the proposed ordinance entitled: 'An ordinance of the City of Santa Barbara, California, approving and entering into a contract between the Santa Barbara County Water Agency, established by Chapter 1501 of the 1945 Statutes of California, as amended, and the City of Santa Barbara, a municipal corporation of the State of California duly organized and existing under the laws thereof, for the furnishing by said Santa Barbara County Water Agency to said [fol. 64] City of Santa Barbara, a water supply from Cachuma Unit to and for the use and benefit of said City of Santa Barbara, for which said City of Santa Barbara will make payment to said Santa Barbara County Water Agency or to the United States upon the bases, at the rates and pursuant to and under the terms and conditions of the aforementioned contract and authorizing and directing the officers of the City of Santa Barbara to sign, countersign, execute, deliver and do all things necessary to enter into and consummate said contract, all in accordance to law and the provisions hereof.'

Hereby submitted to the electors of said City for voting thereon by said electors by way of direct legislation, be enacted by and for said City of Santa Barbara as a direct legislation measure voted upon and adopted by the people, said proposed ordinance being set forth in full in Resolution No. 2064 adopted by the Council of the City of Santa Barbara at its regular meeting held September 15th, 1949, at 2:00 P.M."

VII

Notice of said special election was thereafter given in [fol. 65] all respects for the time and in the manner prescribed by the laws of the State of California in such cases made and provided and by said Ordinance No. 2253, and said notices of election as published and posted contained and set forth a full, true and correct copy of the ordinance submitted to said qualified electors of said City of Santa Barbara, and a full, true and correct copy of said last-mentioned contract referred to in the proposition to be

submitted to said qualified electors; and the Clerk of said City did, within ten (10) days prior to said election, mail to each registered voter in said City, a sample ballot and polling place card in the form prescribed by law, and a full, true and correct copy of said proposed ordinance containing a full, true and correct copy of said last-mentioned contract referred to in the proposition to be submitted to said qualified electors of said City of Santa Barbara.

VIII

That on the 22nd day of November, 1949, pursuant to said Ordinance No. 2253, a special election was held in said City of Santa Barbara, at which there was submitted to the qualified electors of the said City the proposition set forth in Paragraph VI of this Sixth Cause of Action. Said special election was in all respects carried on and conducted as required by the laws of the State of California and by said Ordinance No. 2253.

[fol. 66] IX

That on the 29th day of November, 1949, being the first Tuesday after said special election, the Council of said City of Santa Barbara, at a duly and regularly called, noticed and held special meeting of said Council, duly and regularly held on said day at the aforesaid usual and regular place of meeting of said Council, five of the six members of said Council being present, did duly and regularly meet as a canvassing board and all said members present voting therefor, did duly and regularly canvass the returns of said election and did duly and regularly make and enter in the records of said Council its finding and statement that the whole number of votes cast in said City of Santa Barbara at said election was 15,154, and that of the total number of votes so cast, 11,405 votes were cast for said proposition and 3,680 votes were cast against said proposition, and that said proposition was duly carried and approved by the electors of said City of Santa Barbara. That thereby said proposed ordinance was duly enacted by the electors of said City of Santa Barbara and the said

proposed contract was duly approved and entered into by said City, and said electors of said City authorized and directed the officers of the said City to sign, countersign, execute and deliver and do all things necessary to enter into and consummate said contract in accordance to law and the provisions of said initiative ordinance.

Wherefore, Plaintiff prays that this Court, after due [fol. 67] notice and hearing, determine, adjudge and declare that:

1. That certain contract hereinbefore referred to, entitled "Contract for the Furnishing of Water to Member Units of Santa Barbara County Water Agency", dated September 12, 1949, and executed by and between the United States of America and the Santa Barbara County Water Agency is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of the Santa Barbara County Water Agency to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract have been taken, had and performed in the manner required by law and that said contract is valid and legally binding upon, against and in favor of said Santa Barbara County Water Agency, and that this Court make and cause to be entered its judgment establishing and adjudging that said contract is valid and is a valid and legal obligation of said Agency and that said Board of Directors of said Agency and said Agency had authority to enter into such contract.

2. That certain contract hereinbefore referred to, entitled "Contract for Furnishing Water to Carpinteria County Water District", dated September 12, 1949, and executed by and between said Agency and the Carpinteria County Water District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Carpinteria County Water District to make, enter into and [fol. 68] carry out, and that all proceedings leading up to and including the execution of said contract last-mentioned have been taken, had and performed in the manner required by law and that said contract last-mentioned is

valid and legally binding upon, against and in favor of said Agency and said Carpinteria County Water District, and that this Court make and cause to be entered its judgment establishing and adjudging that said contract last-mentioned is valid and is a valid and legal obligation of said Agency and said Carpinteria County Water District and that said Board of Directors of said Agency and said Agency and said Board of Directors of said Carpinteria County Water District and said Carpinteria County Water District had authority to enter into said contract.

3. That certain contract hereinbefore referred to, entitled "Contract for Furnishing Water to Goleta County Water District", dated September 12, 1949, and executed by and between said Agency and the Goleta County Water District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Goleta County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last mentioned is valid and legally binding upon, against and in favor of said Agency and said Goleta [fol. 69] County Water District, and that this Court make and cause to be entered its judgment establishing and adjudging that said contract last mentioned is valid and is a valid and legal obligation of said Agency and said Goleta County Water District and that said Board of Directors of said Agency and said Agency and said Board of Directors of said Goleta County Water District and said Goleta County Water District had authority to enter into said contract.

4. That certain contract hereinbefore referred to, entitled "Contract for Furnishing Water to Montecito County Water District", dated September 12, 1949, and executed by and between said Agency and the Montecito County Water District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Montecito

and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last-mentioned is valid and legally binding upon, against and in favor of said Agency and said Montecito County Water District, and that this Court make and cause to be entered its judgment establishing and adjudging that said contract last-mentioned is valid and is a valid and legal obligation of said Agency and said Montecito County Water District and that said Board of Directors of said Agency and said Agency and said Board of Direc- [fol. 70] tors of said Montecito County Water District and said Montecito County Water District had authority to enter into said contract.

5. That certain contract hereinbefore referred to, entitled "Contract for Furnishing Water to Summerland County Water District", dated December 8, 1949, and executed by and between said Agency and the Summerland County Water District is, and that each and every of the terms and provisions thereof are lawful and valid and within the lawful power of said Agency and said Summerland County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last-mentioned have been taken, had and performed in the manner required by law and that said contract last-mentioned is valid and legally binding upon, against and in favor of said Agency and said Summerland County Water District, and that this Court make and cause to be entered its judgment establishing and adjudging that said contract last-mentioned is valid and is a valid and legal obligation of said Agency and said Summerland County Water District and that said Board of Directors of said Agency and said Agency and said Board of Directors of said Summerland County Water District and said Summerland County Water District had authority to enter into said contract.

6. That certain contract hereinbefore referred to, entitled "Contract for Furnishing Water to City of Santa Barbara", dated September 12, 1949, and executed by [fol. 71] and between said Agency and the City of Santa

Barbara is, and that each and every of the terms and provisions thereof are lawful and valid and within the lawful power of said Agency and said City of Santa Barbara to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last-mentioned have been taken, had and performed in the manner required by law and that said contract last-mentioned is valid and legally binding upon, against and in favor of said Agency and said City of Santa Barbara, and that this Court make and cause to be entered its judgment establishing and adjudging that said contract last-mentioned is valid and is a valid and legal obligation of said Agency and said City of Santa Barbara and that said Board of Directors of said Agency and said Agency and said Council of said City of Santa Barbara and said City of Santa Barbara had authority to enter into said contract.

7. For such other and further relief as may be meet and just in the premises.

Dated: At Santa Barbara, California, this 6th day of February, 1950.

David S. Licker, District Attorney of the County of Santa Barbara and Ex-Officio Attorney for said Agency, and Lawrence M. Parma, Deputy District Attorney, By Lawrence M. Parma, Attorneys for Plaintiff.

[fol. 72] *Duly sworn to by T. A. Twitchell, jurat omitted in printing.*

[fol. 73] EXHIBIT "A" TO COMPLAINT, ETC.

Contract Symbol & No.
175r-1802

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Santa Barbara County Project, California

CONTRACT FOR THE FURNISHING OF WATER TO MEMBER UNITS OF SANTA BARBARA COUNTY WATER AGENCY

Article	*Title*
1	Preamble
2-8	Explanatory Recitals
9	Definitions
10	Term of Contract
11	Water to be Furnished by United States
12	Time for Delivery of Water
13	Rate and Method of Payment for Water
14	Points of Delivery, Measurement, and Responsibility for Distribution of Water
15	United States Not Liable for Water Shortage
16	Storage of Water
17	Disposition of Water by Member Units
18	Agreed Charges for Each Member Unit to be a General Obligation of Such Member Unit
19	Defaults
20	Levy of Taxes and Assessments—Fixing of Rates and Tolls
21	Penalty upon Delinquency in Payment
22	District to Keep Books and Records and Report Crop and Other Data
[fol. 74] *Article* (Cont'd.)	*Title*
23	Inspection of Books and Records
24	Changes in Organization of Member Units
25	Lands Not to Receive Water Until Owners thereof Execute Certain Contracts
26	Valuation and Sale of Excess Lands

27 Excess Land
28 Amendment of Federal Reclamation Laws
29 Contracts Between Agency and Member Units
30 Existing Water Rights
31 Contingent upon Appropriation or Allotments of Funds
32 Officials Not to Benefit
33 Notices
34 Assignment
35 Assurances Relating to Validity of Contract

[fol. 75] Contract Symbol & No. 175r-1802

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Santa Barbara County Project

CONTRACT FOR THE FURNISHING OF WATER TO MEMBER UNITS OF SANTA BARBARA COUNTY WATER AGENCY

1. THIS CONTRACT, made this 12th day of September, 1949, in pursuance generally of the Act of Congress of June 17, 1902 (32 Stat. 388); and acts amendatory thereof or supplementary thereto, all collectively herein styled the Federal reclamation laws, between THE UNITED STATES OF AMERICA, herein styled the United States, and the SANTA BARBARA COUNTY WATER AGENCY, herein styled the Agency, a political subdivision of the State of California, duly organized, existing, and acting pursuant to the laws thereof, including but not restricted to the Santa Barbara County Water Agency Act, with its principal place of business in the City of Santa Barbara, State of California;

WITNESSETH THAT:

EXPLANATORY RECITALS

2. WHEREAS, the City of Santa Barbara, the Goleta County Water District, the Montecito County Water District, the Summerland County Water District, the Carpin-

teria County Water District, and the Santa Ynez River Water Conservation District are "Districts" lying within the Agency as defined by subdivision (f) of Section 2 of the Santa Barbara County Water Agency Act, and it is contemplated that said Districts will become with respect to [fol. 76] this contract "member units" of said Agency, as defined in and by the Santa Barbara County Water Agency Act; and

3. WHEREAS, the lands and inhabitants within said Agency and within each and all of said Districts are in critical need of additional water for municipal, domestic, and irrigation uses; and

4. WHEREAS, investigations of the present water supply indicate that irrigated and irrigable lands within the boundaries of the Agency and of said Districts are at present in need of additional water for irrigation and certain areas have a potential need of water for irrigation and certain areas require a new or supplemental supply of water for municipal and miscellaneous purposes for present and future needs, and that ground-water supplies are seriously depleted and in need of replenishment and that a supplemental water supply to meet these present and potential needs can be made available by and through the works to be constructed by the United States; and

5. WHEREAS, investigations of the stream flow in the Santa Ynez River and its tributaries and present and future requirements for beneficial uses indicate that there will be available, for furnishing for the use and benefit of said member units, a supplemental water supply from Cachuma Unit for irrigation, municipal, industrial, and domestic uses; and

6. WHEREAS, the United States proposes to construct the [fol. 77] Cachuma Unit of the Santa Barbara County Project, said unit to consist of Cachuma Dam and Reservoir, designed to have water storage capacity commensurate with the water supply requirements of this contract, Tecolote Tunnel, and the South Coast Conduit, for diversion, storage, carriage, and distribution to member units of waters of the Santa Ynez River and its tributaries and water devel-

oped in Tecolote Tunnel for irrigation, municipal, domestic, industrial, and other beneficial uses and purposes as authorized by means of a report by the Secretary of the Interior, House Document No. 587 (80th Congress, 2nd Session), the total estimated cost of the proposed construction at cost levels as of the date of said report being $28,610,000; and

7. WHEREAS, it has been determined to be infeasible to execute a repayment contract pursuant to sections 9(c)(1) and 9(d) of the Reclamation Project Act of 1939, this contract is being executed pursuant to sections 9(c)(2) and 9(e) of said act; and

8. WHEREAS, the Agency desires to contract pursuant to the Federal reclamation laws for the furnishing by the United States of a water supply from the Cachuma Unit for the use and benefit of its said member units for which the Agency will make payment to the United States upon the basis, at the rates, and pursuant to the conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby agreed by [fol. 78] the parties hereto as follows:

DEFINITIONS

9. When used herein, unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the term:

(a) "Secretary" or "contracting officer" shall mean the Secretary of the United States Department of the Interior or his duly authorized representative;

(b) "Initial delivery date" shall mean the date on which water will be available for furnishing by the United States pursuant to subdivision (a) of Article 11 of this contract by means of the Cachuma Unit and which shall be announced in advance by the Secretary to the Agency in writing;

(c) "Year" shall mean the period from May 15 through May 14, both dates inclusive;

(d) "Municipal Water" shall mean water furnished or to be furnished by the United States (i) to or used by or in Santa Barbara, or (ii) to or used by or in any incorporated city, or (iii) to or used by or in any "municipal area" as said term "municipal area" is defined in Article 13 of this contract;

(e) "Irrigation water" shall mean water furnished or to be furnished to member units to be used or used for beneficial purposes other than those specified in subdivision (d) of this article;

(f) "Member unit" shall mean any district as defined in [fol. 79] and by the Santa Barbara County Water Agency Act which enters into a contract with the Agency for the payment for water to be furnished to such member unit by the United States pursuant to this contract;

(g) "Interim period" shall mean the period commencing with the initial delivery date and extending through May 14 of the fourth year after the year in which the initial delivery date occurs;

(h) "Period" shall mean each of the last seven consecutive five-year periods of the term of this contract, the first of which will commence on May 15 immediately following the close of the interim period;

(i) "Santa Barbara" shall mean the City of Santa Barbara;

(j) "Goleta" shall mean the Goleta County Water District;

(k) "Summerland" shall mean the Summerland County Water District;

(l) "Montecito" shall mean the Montecito County Water District;

(m) "Carpinteria" shall mean the Carpinteria County Water District;

(n) "Santa Ynez" shall mean the Santa Ynez River Water Conservation District;

(o) "Santa Barbara County Water Agency Act" shall [fol. 80] mean the Santa Barbara County Water Agency Act, passed by the California legislature and approved July 18, 1945, as now or hereafter amended.

TERM OF CONTRACT

10. This contract shall become effective upon its execution and shall remain in effect for a period of forty (40) years commencing with the year in which the initial delivery date occurs: *Provided*, That in the event the Congress of the United States during the term of the contract enacts legislation permitting the renewal or extension of this contract, the Agency may, at its option, extend or renew this contract in conformance with and subject to the terms of the then existing law.

WATER TO BE FURNISHED BY UNITED STATES

11. (a) To the extent that water and the facilities necessary for furnishing such water to member units are available therefor, as determined by the contracting officer, the United States shall furnish to member units each year during the interim period, and the Agency each year during such interim period shall collect from such member units and pay to the United States for such quantities of water as are specified in a schedule submitted by the Agency in accordance with Article 12 for each such year.

(b) Each year the United States shall furnish to, and the Agency shall collect from and pay to the United States for:

[fol. 81] (i) *Santa Barbara*

3,300 acre-feet of water during the first period.
4,500 acre-feet of water during the second period.
5,600 acre-feet of water during the third period.
6,800 acre-feet of water during the fourth period.
7,900 acre-feet of water during the fifth period.
9,100 acre-feet of water during the sixth period.
10,300 acre-feet of water during the seventh period.

(ii) *Goleta*

3,300 acre-feet of water during the first period.
4,700 acre-feet of water during the second period.
6,100 acre-feet of water during the third period.
7,400 acre-feet of water during the fourth period.
8,800 acre-feet of water during the fifth period.
10,200 acre-feet of water during the sixth period.
11,600 acre-feet of water during the seventh period.

(iii) *Summerland*

100 acre-feet of water during the first period.
200 acre-feet of water during the second period.
300 acre-feet of water during the third period.
300 acre-feet of water during the fourth period.
400 acre-feet of water during the fifth period.
400 acre-feet of water during the sixth period.
400 acre-feet of water during the seventh period.

(iv) *Montecito*

[fol. 82] 500 acre-feet of water during the first period.
1,000 acre-feet of water during the second period.
1,500 acre-feet of water during the third period.
1,900 acre-feet of water during the fourth period.
2,400 acre-feet of water during the fifth period.
2,800 acre-feet of water during the sixth period.
2,900 acre-feet of water during the seventh period.

(v) *Carpinteria*

1,000 acre-feet of water during the first period.
1,500 acre-feet of water during the second period.
2,000 acre-feet of water during the third period.
2,400 acre-feet of water during the fourth period.
2,900 acre-feet of water during the fifth period.
3,300 acre-feet of water during the sixth period.
3,500 acre-feet of water during the seventh period.

(vi) *Santa Ynez*

500 acre-feet of water during the first through the seventh period: *Provided*, That the United States shall furnish to Santa Ynez each year, at the annual option of the Agency, additional quantities of water but not in excess of 2,800 acre-feet of such additional water per year. Written

EXCESS LAND

27. (a) As used herein the term "excess land" means that part of the irrigable land within a member unit in excess of 160 acres held in the private beneficial ownership of any single person; or in excess of 320 acres held in the beneficial ownership of husband and wife as tenants in common, by the entirety, as joint tenants, or as community property; the term "large land owner" means an owner of excess land and the term "nonexcess land" means all irrigable land within a member unit which is not excess land as defined herein.

(b) Each large land owner as a further condition prece- [fol. 107] dent to the right to receive water for any of his excess land shall:

(i) Before any water is furnished a member unit to or for his excess land within such member unit, execute a valid recordable contract in form satisfactory to the Secretary, agreeing to the provisions of Articles 25, 26, and 27 of this contract and agreeing to dispose of his excess land in accordance therewith to persons who can take title thereto as nonexcess land as herein provided and at a price not to exceed the approved, appraised value of such excess land and agreeing further that if said land is not so disposed of within a period of ten (10) years after the date of the execution of said recordable contract the Secretary shall have the power to dispose of said land subject to the same conditions on behalf of such large land owner; and the Agency shall require each member unit to agree that it will refuse to deliver water to any large land owner other than for his nonexcess land within the member unit until such owner meets the conditions precedent therein stated.

(ii) Within thirty (30) days after the date of notice from the United States requesting such large land owner to designate his irrigable land within the member unit which he desires to designate as nonexcess land, file in the office of the member unit, in duplicate, one [fol. 108] copy thereof to be furnished by the member

unit to the Bureau of Reclamation, his written designation and description of land so selected to be nonexcess land and upon failure to do so the member unit shall make such designation and mail a notice thereof to such large owner, and in the event the member unit fails to act within such period of time as the contracting officer considers reasonable, such designation will be made by the contracting officer who will mail a notice thereof to the member unit and the large land owner. The large land owner shall become bound by any such action on the part of the member unit or the contracting officer and the member unit will deliver water only to the land within its boundaries so designated to be nonexcess land.

AMENDMENT OF FEDERAL RECLAMATION LAWS

28. In the event that the Congress of the United States repeals the so-called excess-land provisions of the Federal reclamation laws, Articles 25, 26 and 27 of this contract will no longer be of any force or effect, and in the event that the Congress amends the excess-land provisions or any other provisions of the Federal reclamation laws the United States agrees, at the option of the Agency, to amend by language to be mutually agreed upon by the United States and the Agency the appropriate articles of this contract, all [fol. 109] consistently with the provisions of such repeal or amendment.

CONTRACTS BETWEEN AGENCY AND MEMBER UNITS

29. (a) Each contract between the Agency and a member unit involving water to be furnished by the United States pursuant to this contract shall be subject to the terms of this contract and shall so provide. Each such contract providing for the furnishing of water for irrigation uses shall also include Articles 25, 26, 27 and 28 of this contract with such modifications or revisions as are necessary in the opinion of the contracting officer and the Agency.

(b) Each contract between the Agency and a member unit, in so far as such contract pertains to water which may

be furnished by the United States, shall contain a provision whereby the member unit agrees to the provisions of this contract. In the event that within one year after the execution of this contract, there have not been executed contracts between the Agency and districts which in the aggregate will provide for the disposition of at least 8,100 acre-feet per year of the water to be made available pursuant hereto by the United States during the first period hereof, then this contract shall be of no force or effect. If this contract becomes effective but not all the proposed member units named in sections (i) to (n), both inclusive, of Article 9 hereof execute such contracts with the Agency, then any provision hereof relating to any such proposed member unit [fol. 110] not executing such an Agency contract shall be disregarded and shall be given no force or effect and shall not create any right or liability in favor of or against the United States, the Agency, any governmental unit, city, district, person, corporation or association whether a party hereto or not.

EXISTING WATER RIGHTS.

30. Subject to agreement or the power of the United States of eminent domain:

(a) The water from the Santa Ynez River to be conserved, distributed, and used by means of the Cachuma Unit, other than water obtained by means of tunnels in the Santa Ynez Mountain Range, shall be water which, at the time of the appropriation thereof by the United States, was or shall be available for appropriation under the laws of the State of California. The established water rights of any member unit, whether such rights are presently fully developed or not, are hereby recognized by the United States and the Agency, and shall be preserved notwithstanding the execution of this contract or of any provision of this contract to the contrary, or any operation or use hereunder.

(b) Neither Santa Ynez, Santa Barbara, nor Montecito shall be required to deliver or transfer to the United States, the Agency, the Cachuma Unit, or to any person or entity entitled to water therefrom any water

[fol. 111] or water rights to which said City or Districts are entitled under their or its established water rights.

(c) The United States and the Agency hereby recognize and agree not to take, restrict, impair, or interfere with any or all of said presently established rights to water for present use and future development based upon such rights.

CONTINGENT UPON APPROPRIATIONS OR ALLOTMENTS OF FUNDS

31. The expenditure of any money or the performance of any work or service by the United States herein provided for which may require appropriations of money by Congress or the allotment of funds, shall be contingent upon such appropriations or allotments being made. The failure of Congress so to appropriate funds or the failure of an allotment of funds shall not relieve the Agency from any obligations under this contract and no liability shall accrue to the United States in case such funds are not so appropriated or allotted: *Provided*, That in the event that water deliveries are halted or curtailed as a result of such failure to appropriate or allot funds, the obligation of the Agency to make payments pursuant to this contract shall be reduced to the extent of such halting or curtailment of service.

OFFICIALS NOT TO BENEFIT

32. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this [fol. 112] contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

NOTICES

33. Any notice or announcement which the provisions hereof contemplate shall be given to one of the parties hereto by the other shall be deemed to have been given when deposited in the United States Post Office, on the part of the United States in a franked envelope addressed to the Agency or to the member unit involved at its office and on the part of the Agency in a postage prepaid envelope ad-

dressed to the Bureau of Reclamation, Department of the Interior, Sacramento, California, or such other address as from time to time may be designated by the Secretary in a written notice to the Agency: *Provided*, however, That this article shall not preclude the effective service of any such notice or announcement by other means.

ASSIGNMENT

34. The provisions of this agreement shall apply to and bind the successors and assigns of the respective parties, but no assignment or transfer of this contract or any part thereof or interest therein shall be valid until and unless approved by the Secretary. No sale or other disposal by any member unit for use outside of such member unit or another member unit of any water, or the right to the use [fol. 113] thereof, furnished to such member unit pursuant to this contract shall be valid.

ASSURANCES RELATING TO VALIDITY OF CONTRACT

35. Promptly after the execution and delivery of this contract the Agency shall file or cause to be filed and prosecute or cause to be prosecuted to a final decree, including any appeal therefrom, an action at law, or in equity or a special proceeding for the judicial examination, approval, and confirmation of the proceedings had for the organization of the Agency and the proceedings of the Board of Directors of the Agency and the proceedings of the Agency leading up to and including the making of this contract and the validity of the provisions hereof, and for the judicial examination, approval and confirmation of contracts made between the Agency and its member units in so far as the same may relate to water to be furnished under the provisions of this contract.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their names the day and year first hereinabove written.

APPROVED AS TO LEGAL
FORM AND SUFFICIENCY

/s/ John K. Bennett
Acting Regional Counsel

THE UNITED STATES OF AMERICA

By Richard L. Boke
Regional Director, Region 2,
Bureau of Reclamation,
United States Department of
the Interior.

SANTA BARBARA COUNTY WATER AGENCY

By T. A. Twitchell
Chairman, Board of Directors

Attest:

J. E. Lewis (Seal)
Clerk of said Agency

[fol. 130] EXHIBIT "D" TO COMPLAINT, ETC.

SANTA BARBARA COUNTY WATER AGENCY

CONTRACT FOR THE FURNISHING OF WATER TO THE CITY OF SANTA BARBARA

Article	*Title*
1	Preamble
2–8	Explanatory Recitals
9	Definitions
10	Term of Contract
11	Water to be Furnished by United States and Agency
12	Time for Delivery of Water
13	Rate and Method of Payment for Water
14	Points of Delivery, Measurement, and Responsibility for Distribution of Water

15 Agency and United States not Liable for Water Shortage
16 Storage of Water
17 Disposition of Water by Santa Barbara
18 Agreed Charges for Santa Barbara to be a General Obligation of Santa Barbara
19 Defaults
20 Levy of Taxes and Assessments—Fixing of [fol. 131] Rates and Tolls
21 Penalty Upon Delinquency in Payment
22 Santa Barbara to Keep Books and Records and Report Crop and Other Data
23 Inspection of Books and Records
24 Lands Not to Receive Water Until Owners Thereof Execute Certain Contracts
25 Valuation and Sale of Excess Lands
26 Excess Land
27 Amendment of Federal Reclamation Laws
28 Contract Between Agency and United States
29 Existing Water Rights
30 Contingent Upon Appropriations or Allotments of Funds
31 Failure of United States to Perform
32 Notices
33 Assignment
34 Duties of Agency
35 Assurances Relating to Validity of Contracts —Litigation

[fol. 132]

SANTA BARBARA COUNTY WATER AGENCY

Contract for the Furnishing of Water to the City of Santa Barbara

1. This Contract, made this 12th day of September, 1949, at and in the County of Santa Barbara, State of California, between The Santa Barbara County Water Agency, herein styled "the Agency", established by Chapter 1501 of the 1945 Statutes of California, as amended, and the City of Santa Barbara, herein styled "Santa Barbara",

a municipal corporation of the State of California, duly organized and existing under the laws thereof,

WITNESSETH THAT:

EXPLANATORY RECITALS

2. WHEREAS, the City of Santa Barbara, the Carpinteria County Water District, the Goleta County Water District, the Montecito County Water District, the Summerland County Water District and the Santa Ynez River Water Conservation District are "Districts" lying within the Agency as defined by subdivision (f) of section 2 of the Santa Barbara County Water Agency Act, and it is contemplated that said Districts will become "member units" of the Agency, as defined in and by the Santa Barbara County Water Agency Act, with respect to that certain contract between the United States and the Agency bearing the [fol. 133] date of the 12th day of September, 1949, (which contract is hereinafter styled the "Master Contract"); a copy of which is attached hereto, marked Exhibit "A", and by reference made a part hereof; and

3. WHEREAS, the lands and inhabitants within the Agency and within each and all of said Districts, including Santa Barbara, are in critical need of additional water for municipal, domestic and irrigation uses; and

4. WHEREAS, investigations of the present water supply indicate that irrigated and irrigable lands within the boundaries of the Agency and of said Districts, including Santa Barbara, are at present in need of additional water for irrigation and certain areas have a potential need of water for irrigation and certain areas require a new or supplemental supply of water for municipal and miscellaneous purposes for present and future needs, and that ground water supplies are seriously depleted and in need of replenishment and that a supplemental water supply to meet these present and potential needs can be made available by and through the works to be constructed by the United States under said Master Contract; and

5. WHEREAS, investigations of the stream flow in the Santa Ynez River and its tributaries and present and future

requirements for beneficial uses indicate that there will be available, for furnishing for the use and benefit of said [fol. 134] member units, including Santa Barbara, a supplemental water supply from Cachuma Unit for irrigation, municipal, industrial and domestic uses; and

6. WHEREAS, the United States proposes to construct the Cachuma Unit of the Santa Barbara County Project, said unit to consist of Cachuma Dam and Reservoir, designed to have water storage capacity commensurate with the water supply requirements of the Master Contract, Tecolote Tunnel and the South Coast conduit, for diversion, storage, carriage and distribution to member units of waters of the Santa Ynez River and its tributaries and water developed in Tecolote Tunnel for irrigation, municipal, domestic, industrial and other beneficial uses and purposes as authorized by means of a report by the Secretary of the Interior, dated December 22, 1947, and approved and adopted January 7, 1948, (see House Document No. 587, 80th Congress, 2nd Session), the total estimated cost of the proposed construction at cost levels as of the date of said report being $28,610,000; and

7. WHEREAS, the United States and the Agency, pursuant to the provisions, among others, of sections 9(c)(2) and 9(e) of the Reclamation Project Act of 1939, have executed the Master Contract whereby the Agency will be furnished by the United States a water supply from the Cachuma Unit for the use and benefit of the Agency's said member units, including Santa Barbara; and

[fol. 135] 8. WHEREAS, Santa Barbara desires to contract with the Agency for the furnishing by the Agency of a water supply from the Cachuma Unit to and for the use and benefit of Santa Barbara, for which Santa Barbara will make payment to the Agency or to the United States upon the basis, at the rates and pursuant to the conditions in this contract hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby agreed by the parties hereto as follows:

DEFINITIONS

9. When used herein, unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the term:

(a) "Secretary" or "Contracting Officer" shall mean the Secretary of the United States Department of the Interior or his duly authorized representative;

(b) "Initial delivery date" shall mean the date on which water will be available for furnishing by the United States pursuant to subdivision (a) of Article 11 of the Master Contract by means of the Cachuma Unit and which shall be announced in advance by the Secretary to the Agency in writing;

(c) "Year" shall mean the period from May 15 through May 14, both dates inclusive;

[fol. 136] (d) "Municipal water" shall mean water furnished or to be furnished from Cachuma Unit (i) to or used by or in Santa Barbara, or (ii) to or used by or in any incorporated city, or (iii) to or used by or in any "municipal area" as said term "municipal area" is defined in any contract between the Agency and any member unit;

(e) "Irrigation water" shall mean water furnished or to be furnished from Cachuma Unit to member units to be used or used for beneficial purposes other than those specified in subdivision (d) of this Article;

(f) "Member unit" shall mean any district as defined in and by the Santa Barbara County Water Agency Act which enters into a contract with the Agency for the payment for water to be furnished to such member unit by the Agency or the United States pursuant to the Master Contract;

(g) "Interim period" shall mean the period commencing with the initial delivery date and extending through May 14 of the fourth year after the year in which the initial delivery date occurs;

(h) "Period" shall mean each of the last seven consecutive five-year periods of the term of this contract, the first of which will commence on May 15 immediately following the close of the interim period, and [fol. 137] which periods shall be identical with the periods defined in the Master Contract;

(i) "Santa Barbara" shall mean the City of Santa Barbara;

(j) "Goleta" shall mean the Goleta County Water District;

(k) "Summerland" shall mean the Summerland County Water District;

(l) "Montecito" shall mean the Montecito County Water District;

(m) "Carpinteria" shall mean the Carpinteria County Water District;

(n) "Santa Ynez" shall mean the Santa Ynez River Water Conservation District;

(o) "Santa Barbara County Water Agency Act" shall mean the Santa Barbara County Water Agency Act, passed by the California Legislature and approved July 18, 1945, as now or hereafter amended;

(p) Whenever hereunder the Agency is to furnish or deliver water to Santa Barbara or other member units, the delivery or furnishing of such water to Santa Barbara, or other member units, from the Cachuma Unit by the United States shall be construed as furnishing or delivery by the Agency.

[fol. 138] TERM OF CONTRACT

10. This contract shall become effective upon its execution and, subject to the limitations of Article 28(b) hereof, shall remain in effect for a period of forty (40) years commencing with the year in which the initial delivery date occurs: *Provided*, That in the event the Congress of the United States during the term of the Master Contract

enacts legislation permitting the renewal or extension of the Master Contract, and the Agency, at its option, extends or renews the Master Contract in conformance with and subject to the terms of the then existing law, then Santa Barbara, at its option, may extend or renew this contract in conformance with and subject to the terms of the then existing law, and subject to the terms of the Master Contract as so extended or renewed: *Provided*, further, That whenever the Master Contract is terminated in the manner and for the cause or causes specified in the Master Contract this contract shall terminate.

WATER TO BE FURNISHED BY UNITED STATES AND AGENCY

11. (a) To the extent that water and the facilities necessary for furnishing such water to member units are available therefor, as determined by the contracting officer, the Agency shall furnish to Santa Barbara each year during the interim period, and Santa Barbara each year during such interim period shall pay to the Agency, which [fol. 139] in turn shall pay to the United States, for such quantities of water as are specified in a schedule submitted by Santa Barbara to the Agency in accordance with Article 12 for each such year.

(b) Each year the Agency shall furnish to, and Santa Barbara shall pay to the Agency for, which in turn shall pay to the United States for Santa Barbara:

3,300 acre-feet of water during the first period.
4,500 acre-feet of water during the second period.
5,600 acre-feet of water during the third period.
6,800 acre-feet of water during the fourth period.
7,900 acre-feet of water during the fifth period.
9,100 acre-feet of water during the sixth period.
10,300 acre-feet of water during the seventh period.

(c) While the Cachuma Unit has been designed to serve the present and future reasonable beneficial needs and uses of the member units, and while this contract has been executed to serve the present and future beneficial needs and uses of Santa Barbara, there may be temporarily avail-

able at times, for reasons beyond the control of the contracting parties hereto, quantities of water in excess of the amounts necessary for the Agency to meet its obligations under this and other member unit contracts. Each year in which there is such surplus water available from Cachuma Unit, as determined by the contracting officer, the Agency shall offer, at rates not to exceed those specified [fol. 140] in Article 13 hereof, such water to all member units, including Santa Barbara, and the Agency is prohibited from selling such water to any but a member unit. Santa Barbara may purchase during any such year all or part of such water, subject to the limitations of Article 11(d): *Provided*, That in the event Santa Barbara does not indicate to the Agency in writing its desire to accept and pay for such surplus water within fifty (50) days after receiving written notice from the United States or the Agency of its availability, Santa Barbara's right to purchase such water during the respective year shall terminate: *Provided*, further, That in the event the United States in any year sells or furnishes any such surplus water to others than a member unit, the Agency, in accordance with the Master Contract, shall take such measures as are necessary (i) to prevent such water from being sold by the United States at a rate which is less than that offered to the Agency for the benefit of its member units, (ii) to provide that the contract between the United States and such other party shall expressly provide that the Agency and the member units shall have a prior right to such water in the event of a shortage and that the right of further service to such other party shall be subject to the present and future needs of the member units for quantities of water in excess of those stipulated herein and in the Master Contract, (iii) to provide that each such contract between the United States and party other [fol. 141] than the Agency and a member unit shall be for a term of no longer than one year, and (iv) to provide that revenues derived by the United States in excess of the costs of operation and maintenance from the sale of all such surplus water, whether to a member unit or otherwise, shall be credited to the construction cost of the Cachuma Unit.

(d) In the event that member units desire to purchase more of the excess water specified in Article 11(c) than is available, Santa Barbara shall be entitled to purchase that portion of the available supplies as the amount of water specified for Santa Barbara by Article 11(b) of the Master Contract in that year from Cachuma Unit bears to the amount of water specified by said Article 11(b) of the Master Contract in that year for all member units desiring to purchase such excess water in that year from Cachuma Unit: *Provided*, That if any member unit has assigned to Santa Barbara any of such member unit's right to receive water specified in said Article 11(b) of the Master Contract, the right of Santa Barbara to purchase excess water shall be correspondingly increased.

TIME FOR DELIVERY OF WATER

12. (a) On or before March 15, preceding each year during the interim period the contracting officer will notify the Agency in writing of his estimate of the quantity of water which will be available from the Cachuma Unit during the ensuing year, which estimate may be revised [fol. 142] from time to time by the contracting officer during such year. Within seven (7) days after receipt of such notice, or any revision thereof, the Agency shall transmit a true copy thereof to Santa Barbara.

(b) Except as provided in subdivision (c) of this Article, Santa Barbara shall submit in writing to the Agency on or before March 10 of each year during the term of this contract a schedule, subject to the provisions of Article 11 hereof and in form satisfactory to the Agency and the contracting officer, indicating the desired times and quantities for the delivery of water to Santa Barbara pursuant to said Article 11 during the following year. The Agency shall, within the provisions hereof, make all reasonable effort to deliver said water in accordance with said schedule, or any revision thereof submitted by Santa Barbara within a reasonable time before the desired change, if any, of time for delivery. If in any year during the interim period the contracting officer notifies the Agency that he has revised his estimate of the quantity

of water which will be available from the Cachuma Unit during such year, the Agency, within seven (7) days of the receipt of such notice, shall transmit a true copy of such notice to Santa Barbara, and Santa Barbara, within a reasonable time thereafter, may revise its schedule to avail itself of any increased supply of water or to conform with any decreased supply of water.

[fol. 143] (c) Within seven (7) days after the Agency has received written notice from the contracting officer of his estimate of the quantity of water which will be available from the Cachuma Unit during the portion of the interim period beginning with the initial delivery date and ending on the following May 15, the Agency shall transmit a true copy of such notice to Santa Barbara. Santa Barbara, within a reasonable time after receipt by it of such notice, shall submit a schedule indicating the desired times and quantities for the delivery of water for such portion of the interim period.

RATE AND METHOD OF PAYMENT FOR WATER

13. (a) The rate or rates to be paid by Santa Barbara for water furnished hereunder, and which Santa Barbara hereby agrees to pay, shall be the rate or rates announced each year by the contracting officer in accordance with the provisions of Article 13(a) of the Master Contract for water to be furnished Santa Barbara during the subsequent year, (hereinafter called the "gross rate or gross rates"), less the discount, if any, hereinafter provided for, (hereinafter called "the discount"), which resultant rate to be paid by Santa Barbara shall be known as the "net rate or net rates". In no event shall either the gross or the net rates so established for any year during the term of this contract be in excess of Ten Dollars ($10.00) per acre-foot for irriga-[fol. 144] tion water for Santa Ynez nor Twenty-five Dollars ($25.00) per acre-foot for irrigation water for Montecito, Carpinteria, Goleta and Summerland, nor Thirty-five Dollars ($35.00) per acre-foot for municipal water: *Provided*, That neither the gross nor net rates for irrigation water nor municipal water shall include an interest component. In the event the contracting officer announces gross rates

for any year which are less than the maximum rates herein provided for, the gross rates so announced shall be in the ratio of Thirty-five Dollars ($35.00) per acre-foot for municipal water, Twenty-five Dollars ($25.00) per acre-foot for irrigation water for Summerland, Carpinteria, Goleta and Montecito, and Ten Dollars ($10.00) per acre-foot for irrigation water for Santa Ynez.

(b) Santa Barbara each year shall be entitled to a discount per acre-foot on the rates announced by the contracting officer for the water furnished to it under the provisions of Article 11(b) of this contract, computed as follows: The rate announced by the contracting officer for water for Santa Barbara for such year shall be multiplied by $100,000, and the figure thus obtained shall be divided by the total sum due the United States for all water specified in Article 11(b) of the Master Contract for such year, including any water for Santa Ynez for such year for which the option specified in (vi) of said Article is exercised. Santa Barbara [fol. 145] each year during the interim period shall be entitled to a discount per acre-foot on the rates announced by the contracting officer for water furnished to it during such year computed as follows: The rate announced by the contracting officer for water for Santa Barbara for such year shall be multiplied by $100,000 and the figure thus obtained shall be divided by the total sum due the United States for all water furnished to all member units during such year. Each year, at the time Santa Barbara's payment is first due the Agency for water to be furnished Santa Barbara that year, the Agency shall credit Santa Barbara's account with the total discount due Santa Barbara for such year. In the event Santa Barbara in any year, including the interim period, does not utilize its full discount by failure of the delivery to it of all the water specified in Article 11(b) for that particular year, Santa Barbara shall be entitled to apply the unused portion of said discount on the purchase in any succeeding year or years during the term of this contract of either water specified in Article 11(b) or surplus water. Except as in the preceding sentence specified, no discount shall be allowed on the purchase of surplus water.

(c) Notwithstanding anything in this contract to the contrary:

(i) The aggregate discounts each year for all member units executing contracts with the Agency within the time [fol. 146] specified in Article 29(b) hereof, shall not exceed the sum of $100,000.

(ii) Subject to the foregoing limitation, the Agency shall not during the existence of this nor the Master Contract pay, credit or allow in any year any such aggregate discounts in excess of an amount which can be financed by the total of Agency funds then on hand and available for such purpose plus funds raised by the levy for such year of an Agency tax not exceeding 10¢ on each $100 of assessed valuation of all property in the Agency.

(iii) If, during the existence of this or the Master Contract, the Agency executes member unit contracts relative to a project other than Cachuma Unit, the aggregate each year of all payments and contributions under section 10.2 of the Santa Barbara County Water Agency Act to or for all member units shall not exceed in such year an amount which can be financed for such year by Agency funds then on hand and available for such purpose plus funds raised in such year by the Agency tax specified in (ii) hereof.

(iv) If member unit contracts are executed by the Agency during the existence of this or the Master Contract relative to a project other than Cachuma Unit, and because of the limitations imposed by (ii) and (iii) hereof, sufficient money cannot be obtained by the Agency in any year to fully pay or credit all member units all sums otherwise due [fol. 147] them in such year from the Agency for the purposes specified in said section 10.2 of said Act, then the Agency in such year shall pay to or credit the member units specified in Article 29(b) of this contract on account of their aggregate discounts for such year, a sum equal to two-thirds (2/3) of the Agency funds then on hand and available for such purpose plus funds raised by the levy for such year of an Agency tax at the rate of 6-2/3¢ on each $100 of assessed valuation of all property in the Agency: *Provided*, That if one-third (1/3) of the Agency funds then on hand and available for such purpose plus funds raised by the levy for such year of an Agency tax at the rate of 3-1/3¢

on each $100 of assessed valuation of all property in the Agency are in excess of the sum necessary for the Agency to fulfill its contractual obligations for such year under said section 10.2 of said Act with reference to member units executing contracts with the Agency relative to a project other than Cachuma Unit, then the Agency must use in such year all such excess funds for the payment of discounts of the member units specified in Article 29(b) of this contract.

(v) If, because of the limitations contained in subdivision (c) of this Article, the total of such available and tax raised funds for any year for the member units' discounts specified in (i) hereof is less than $100,000, the amount of such total shall be substituted for the figure $100,000 [fol. 148] wherever it appears in Article 13(c) hereof for the purpose solely of computing Santa Barbara's discount for such year.

(d) The Agency will collect the net rates from each member unit or units for water required to be furnished by the Agency to such member unit pursuant to the Agency contract with such member unit. Each year the Agency will pay to the United States in advance of the delivery of water to a member unit the amount due to the United States for the quantity of water to be delivered to the member unit during such year. Such payment shall be made by the Agency on or before May 15 or such other date, prior to the time for the commencement of delivery of water to the respective member unit of the respective year, as may be specified by the contracting officer in written notice to the Agency.

(e) Santa Barbara will pay the Agency each year in advance of delivery of water to Santa Barbara the amount due the Agency hereunder for the quantity of water to be delivered to Santa Barbara during such year. Such payment shall be made by Santa Barbara on or before May 10 or five (5) days prior to such other date, prior to the time for commencement of delivery of water to Santa Barbara of the respective year, as may be specified by the contracting officer in written notice to the Agency: *Provided*, That such payment can be made by Santa Barbara directly to the

[fol. 149] United States and the sum thus paid will be credited on the amount due the United States from the Agency under the provisions of the Master Contract for water furnished to Santa Barbara.

(f) In the event Santa Barbara fails or refuses to accept delivery of water available for delivery to Santa Barbara, pursuant to Article 11(b) of this contract, or in the event that Santa Barbara, in any year during the first through the seventh periods, fails to submit a schedule for delivery as provided in Article 12 of this contract, said failure or refusal shall not relieve Santa Barbara of its obligation to pay for said water, and Santa Barbara agrees to make payment therefor to the Agency or the United States in the same manner as if said water had been delivered to and accepted by Santa Barbara.

(g) Any difference between the net rate or net rates and the rates due the United States for water furnished Santa Barbara under this or the Master Contract shall be the obligation and liability of the Agency, and the Agency hereby promises to pay the same if, as and when the same are due.

POINTS OF DELIVERY, MEASUREMENT, AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

14. (a) All water for Santa Barbara will be delivered at South Coast Conduit at such points within the boundaries of Santa Barbara as may be mutually agreed upon in writing by the contracting officer and the Agency, but in reach- [fol. 150] ing such agreement the Agency shall act only in accordance with the instructions of Santa Barbara: *Provided,* That in the event the United States shall have reached the construction of the portion of said conduit, which probably will embrace such points, and the location has not been so agreed upon, such points shall be established at locations as in the determination of the contracting officer will best serve the needs of Santa Barbara.

(b) All water delivered pursuant to this contract shall be measured by the United States at each point of delivery established pursuant to subdivision (a) of this Article and

with equipment installed, operated and maintained by the United States. Upon the written request of Santa Barbara, the Agency will require that the accuracy of such measurements as to Santa Barbara be investigated by the contracting officer and any errors appearing therein adjusted.

(c) The Agency shall not be responsible for the control, carriage, handling, use, disposal or distribution of water which has been delivered to Santa Barbara by the United States or the Agency, nor for damage or claim of damage of any nature whatsoever for which there is legal responsibility, including, but not limited to, property damage, personal injury or death arising out of or connected with the control, carriage, handling, use, disposal or distribution of such water: *Provided,* That this contract is subject to the [fol. 151] right reserved in the Master Contract by the United States to all waste, seepage and return flow water, except sewage water, derived from water furnished Santa Barbara, and which escapes or is discharged beyond the Agency's boundaries and nothing herein shall be construed as an abandonment or relinquishment by the United States of any such water, but this shall not be construed as claiming for the United States or the Agency any right, as waste, seepage or return flow, to water being used pursuant to this contract for surface irrigation or underground storage within the boundaries of Santa Barbara by Santa Barbara or by those claiming by, through or under Santa Barbara.

AGENCY AND UNITED STATES NOT LIABLE FOR WATER SHORTAGE

15. (a) There may occur at times a shortage during any year in the quantity of water available for furnishing to Santa Barbara by the Agency pursuant to this contract, through and by means of the Cachuma Unit, and in no event shall any liability accrue against the Agency or the United States or any of their respective officers, agents or employees for any damage, direct or indirect, arising from a shortage on account of drought, unavoidable causes, or errors in operation, except wilful misconduct or gross negligence. In any year in which there may occur a shortage from any cause, the Agency and the United States shall

[fol. 152] apportion the available water supply among the member units entitled, under existing and future contracts including this contract and the Master Contract, to receive water from Cachuma Unit in accordance with the conclusive determination of the contracting officer as follows:

(i) A determination shall be made of the total quantity of water from Cachuma Unit agreed to be furnished by the United States during the respective year under the Master Contract to all member units, including the amount of water with respect to which the Agency has exercised its option pursuant to Article 11(b)(vi) of the Master Contract, for such year for Santa Ynez, the amount so determined being herein referred to as the contractual commitments.

(ii) A determination shall be made of the total quantity of water which is available to the United States from Cachuma Unit for meeting contractual commitments, the amount so determined being herein referred to as the available supply.

(iii) The total quantity of water agreed to be furnished to each member unit during the respective year, under Article 11 of the Master Contract, shall be divided by the contractual commitments, the quotient thus obtained being herein referred to as the contractual entitlement.

[fol. 153] (iv) The available supply shall be multiplied by the contractual entitlement of each member unit and the result shall be the quantity of water required to be delivered by the Agency to the respective member unit during such year, but in no event shall such amount exceed the total quantity of water agreed to be furnished to such member unit and paid for by the Agency pursuant to Article 11 of the Master Contract.

Within seven (7) days of the receipt by the Agency from the contracting officer of notice of an actual or probable shortage, the Agency will transmit a true copy of such notice to Santa Barbara. In the event that in any year

there is delivered to Santa Barbara, by reason of any such shortage or apportionment, or any failure, discontinuance, or reduction of service as set forth in subdivisions (b), or (c) of this Article, less than the quantity of water which Santa Barbara otherwise would have been entitled to receive under the Master or this contract, and for which payment has been made by Santa Barbara to the Agency, the amount of any such overpayment shall be applied first to any accrued indebtedness arising out of this contract by Santa Barbara to the Agency, and any amount of such overpayment then remaining shall, at the option of Santa Barbara, be refunded or credited upon amounts to become due to the Agency from Santa Barbara under the provisions of this contract in the ensuing year. To the extent of such [fol. 154] deficiency arising from errors in operation, or drought or other unavoidable causes or any discontinuance or reduction of service as set forth in subdivision (c) of this Article, such adjustment shall constitute the sole remedy of Santa Barbara or any one having or claiming to have by, through or under Santa Barbara, the right to the use of any of the water supply provided for herein or in the Master Contract.

(b) Notwithstanding any provision of this contract to the contrary, the Agency shall not be obligated to furnish water to Santa Barbara pursuant to this contract unless and until the construction by the United States of facilities to the extent required for the furnishing of the water to Santa Barbara has been completed as conclusively determined by the contracting officer.

(c) By virtue of authority and in accordance with the provisions contained in the Master Contract, the United States may temporarily discontinue or reduce the amount of water to be furnished to Santa Barbara as herein or in the Master Contract provided for the purposes of such maintenance, repair or replacement and investigations and inspections in connection therewith and preliminary thereto as may be necessary of any of the project facilities necessary for the furnishing of water to Santa Barbara or any part thereof, but so far as feasible the Agency will give [fol. 155] Santa Barbara due notice in advance of such

temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. In the event of any such discontinuance or reduction, the Agency and the United States will, upon the resumption of service, deliver, as nearly as may be feasible, the quantity of water which would have been furnished to Santa Barbara in the absence of such contingency.

STORAGE OF WATER

16. (a) To the extent that storage space is available therefor, the Agency, upon the request of Santa Barbara, shall withhold delivery of and store in Cachuma Reservoir for and on behalf of Santa Barbara any water required to be furnished to Santa Barbara by the Agency pursuant to this contract: *Provided*, That if two or more member units request the storage of water in Cachuma Reservoir, the available storage space will be apportioned each year upon the basis of the amount of water each of such member units is entitled to receive pursuant to its contract with the Agency during the year that such storage space is available, and the release from storage of any such stored water because of the unavailability of storage space and deduction of evaporation and seepage losses shall be upon the same proportional basis.

(b) In the event any water is so stored by any member unit or units, including Santa Barbara, and it becomes necessary to release water from Cachuma Reservoir because of [fol. 156] the lack of storage capacity or for the purposes of repair or maintenance, or in the event that water spills over Cachuma Dam, all water so released or spilled shall be deemed to be water stored by such member unit or units.

(c) The quantity of water which seeps or evaporates from Cachuma Reservoir shall be determined by the contracting officer and from the total amount of water stored by any and all member units, there shall be deducted an amount of water which bears the same ratio to the total amount of such loss as the total amount of water so stored by member units bears to the total amount of water in the Cachuma Reservoir above the invert of the mouth of Tecolote Tunnel. Such seepage or evaporation loss shall be

apportioned amongst storing member units in accordance with the provisions of subparagraph (a) of this Article.

DISPOSITION OF WATER BY SANTA BARBARA

17. (a) Water furnished by the Agency to Santa Barbara may be delivered by Santa Barbara to other member units without the consent of the Agency: *Provided*, That if Santa Barbara receives from the purchasing member unit a sum for such water which is in excess of the total amount paid or owing to the United States for such water plus the expense, if any, incurred by Santa Barbara in handling such water, Santa Barbara shall pay to the Agency or to the United States the amount of such excess, if any.

[fol. 157] (b) Any water furnished by the Agency pursuant to this contract to Santa Barbara and utilized by another member unit as municipal water shall be paid for by Santa Barbara at the rate established pursuant to Article 13 for municipal water, subject to the applicable Santa Barbara discount, if any.

(c) If in any year Santa Barbara sells water to another member unit pursuant to subdivision (a) of this Article, any amounts coming due to the Agency or the United States as a result thereof shall be paid by Santa Barbara to the United States or to the Agency on or before June 10 of the succeeding year.

AGREED CHARGES FOR SANTA BARBARA TO BE A GENERAL OBLIGATION OF SANTA BARBARA

18. Santa Barbara shall pay to the Agency the sums coming due the Agency as a result of Santa Barbara's obligation to pay for water available for furnishing to it pursuant to this contract notwithstanding the individual default in the payment to Santa Barbara by individual water users of assessments, tolls or other charges levied by or owing to Santa Barbara, and Santa Barbara agrees to use all of the powers and resources available to it under the laws of the State of California to collect the funds necessary for it to meet its obligations to the Agency under this contract. Obligations of Santa Barbara arising out of or

[fol. 158] pursuant or incidental to this or the Master Contract shall constitute a general obligation of Santa Barbara and the amounts so coming due shall constitute a general obligation of Santa Barbara notwithstanding the individual default in the payment to Santa Barbara by individual water users of assessments, tolls or other charges levied by or owing to Santa Barbara.

DEFAULTS

19. (a) Should the Agency and Santa Barbara fail to make the payment due to the United States for water to be furnished to Santa Barbara pursuant to this and the Master Contract, and the Agency and Santa Barbara fail to levy the assessments, tolls or other charges necessary to be levied in order for Santa Barbara and the Agency to meet the Agency's and Santa Barbara's obligation to the United States under this and the Master Contract with respect to Santa Barbara, or having levied, should the Agency and Santa Barbara be prevented from collecting such assessments, tolls or other charges by any judicial proceeding or otherwise fail to collect them, no tract of land within Santa Barbara shall be entitled to receive water furnished by the Agency or the United States pursuant to this or the Master Contract to Santa Barbara, except upon payment by the landowner of such assessment or toll charge.

(b) No water shall be furnished to Santa Barbara during any period in which the Agency is in arrears in the [fol. 159] advance payment of charges accrued under the Master Contract with respect to Santa Barbara unless Santa Barbara makes the necessary payment directly to the United States, in which event the Agency shall be relieved of its obligation to make such payment to the United States for such year: *Provided,* That if Santa Barbara makes any payment (exclusive of any penalty due from Santa Barbara) to the United States under this or the Master Contract for water furnished or to be furnished to Santa Barbara, which payment is in excess of the net rates herein provided for in reference to such water, such payment shall not be deemed to be voluntary, and the Agency shall, within fifteen (15) days of such payment by Santa Barbara to the United

States, repay to Santa Barbara the amount of such excess; and *Provided*, further, That if the Agency, having received full or part payment for an obligation of Santa Barbara hereunder, within a reasonable time fails to deliver such payment to the United States in discharge of or as a credit against an obligation of the Agency for Santa Barbara under the Master Contract, then if Santa Barbara makes a full or part payment to the United States in discharge of or as a credit against such obligation of the Agency, the Agency shall, within fifteen (15) days of the making of such payment by Santa Barbara to the United States, repay to Santa Barbara an amount equal to the amount so paid by Santa Barbara to the United States. No water shall be [fol. 160] furnished to Santa Barbara during any period in which Santa Barbara is in arrears in the advance payment of charges accrued under this contract.

(c) No water furnished by the Agency or the United States to Santa Barbara pursuant to this or the Master Contract shall be furnished by Santa Barbara to lands or parties which are in arrears in the payment to Santa Barbara of assessments, rates, tolls or other charges levied or established by Santa Barbara if such assessments, rates, tolls or other charges are necessary for the purpose of raising revenues to meet the payments then due to the United States from the Agency for Santa Barbara for such water.

(d) The United States may, at its option, terminate all rights of Santa Barbara to be furnished water pursuant to this or the Master Contract on sixty (60) days' written notice to the Agency upon the failure of the Agency and Santa Barbara for two or more successive or cumulative years to make any of the payments required in the Master Contract to be made by the Agency to the United States upon behalf of Santa Barbara at the times and in the manner provided if the Agency or Santa Barbara do not pay said delinquent charges within such 60-day period. Within one day of the receipt of such notice, the Agency will deliver a true copy to Santa Barbara. If the Agency or Santa Barbara is prevented by legal action from making [fol. 161] such payments, the United States may not exer-

cise its right of termination for any failure to make such payments when such failure is occasioned by such legal action, unless by the final judgment in such legal action the Master or this contract is rendered unenforceable or void. Said termination shall be effective on January 1 following the date on which such notice is given to the Agency. Upon the effective date of such termination all obligations of the United States and all rights of the Agency and Santa Barbara with respect to Santa Barbara, of any nature whatsoever arising under this and the Master Contract, shall cease, but such termination shall not relieve Santa Barbara of the obligation to make to the Agency all such payments becoming due pursuant to this contract prior to the effective date of such termination. No waiver at any time by the United States of its rights with respect to default under any other matter arising in connection with this contract shall be deemed to be a waiver with respect to any subsequent default or matter.

Levy of Taxes and Assessments—Fixing of Rates and Tolls

20. (a) Santa Barbara shall cause to be levied and collected all necessary taxes and assessments and will use all of the authority and resources of Santa Barbara to meet its obligations hereunder, to make in full all payments to [fol. 162] be made pursuant to this contract on or before the date such payments become due and to meet its obligations under this contract.

(b) The Agency shall use all powers and resources available to it by law, including the taxing power of the Agency or the power to levy special assessments to collect and pay to the United States and make payments promptly on the due dates thereof of all amounts which the Agency by the provisions of this and the Master Contract shall be obligated to pay to the United States.

Penalty Upon Delinquency in Payment

21. Upon each charge to be paid by Santa Barbara to the Agency pursuant to this contract which shall remain unpaid after the same shall have become due and payable,

there shall be imposed a penalty of one-half (1/2) of one (1) percent per month of the amount of such delinquent payment from and after the date when the same becomes due until paid, and Santa Barbara hereby agrees to pay said penalty.

Santa Barbara to Keep Books and Records and Report Crop and Other Data

22. Santa Barbara shall establish and maintain account and other books and records, adequate to enable the Agency to furnish to the Bureau of Reclamation reports and statements to such extent and in such manner and form as may be prescribed by the Secretary, of information pertaining [fol. 163] to (a) accounts and financial transactions of Santa Barbara, to the extent that such information pertains to this and the Master Contract and operations thereunder, (b) crops raised and agricultural or livestock products produced on the land within Santa Barbara, a report thereon for the preceding period of twelve (12) calendar months to be furnished to the Agency annually on or before December 31, or such other date or dates as may be fixed by the Agency.

Inspection of Books and Records

23. Subject to applicable California laws and regulations, the proper officers or agents of Santa Barbara shall have full and free access at all reasonable times to the books and official records of the Agency insofar as the same pertain to the matters and things provided for in this and the Master Contract, with the right at any time during office hours to make copies thereof, and the proper representatives of the Agency shall have similar rights in respect to the books and records of Santa Barbara. Upon written request of Santa Barbara to the Agency, the Agency, on behalf of Santa Barbara, will make any and all investigations and inspections of the records of the Bureau of Reclamation permitted under Article 23 of the Master Contract and will promptly furnish Santa Barbara with all the information thereby obtained.

LANDS NOT TO RECEIVE WATER UNTIL OWNERS THEREOF EXECUTE CERTAIN CONTRACTS

[fol. 164] 24. (a) No water made available to Santa Barbara, pursuant to this or the Master Contract, shall be furnished to any excess land as defined in Article 26 hereof unless the owners thereof shall have executed a valid recordable contract in form prescribed by the United States agreeing to the provisions of Articles 24, 25 and 26 of this contract; agreeing to the appraisal provided for in Article 25 hereof and that such appraisal shall be made on the basis of the actual bona fide value of such land at the date of the appraisal without reference to the construction of the Cachuma Unit, all as hereinafter provided; and agreeing to the sale of his excess lands under terms and conditions satisfactory to the Secretary and at prices not to exceed those fixed as hereinafter provided. No sale of any excess land shall carry the right to receive water made available pursuant to this or the Master Contract unless and until the purchase price involved in such sale is approved by the contracting officer and upon proof of fraudulent representation as to the true consideration involved in such sale the United States may instruct Santa Barbara by written notice to refuse to deliver any water subject to this or the Master Contract to the land involved in such fraudulent sale, and Santa Barbara thereafter shall not deliver said water to such land.

(b) If project water furnished by the United States [fol. 165] to a member unit pursuant to this contract reaches the underground strata of excess land owned by a large landowner who has not executed a recordable contract and the large landowner pumps such project water from the underground, the member unit will not be deemed to have furnished such water to said excess lands within the meaning of this contract, if such water reached the underground strata of the aforesaid excess land as an unavoidable result of the furnishing of project water to nonexcess land or to excess land with respect to which a recordable contract has been executed.

25. (a) The value of the excess irrigable land within Santa Barbara held in private ownership of a large landowner as defined in Article 26 hereof, for the purposes of this contract, shall be determined, subject to the approval thereof by the Secretary, by three appraisers. One of said appraisers shall be designated by the Secretary and one shall be designated by the Agency but the Agency shall be bound to designate as such appraiser one nominated by Santa Barbara, and the two appraisers so appointed shall name the third. If the appraisers so designated by the Secretary and the Agency as aforesaid are unable to agree upon the appointment of the third, the presiding justice of Division Three of the Second District Court of Appeals of the State of California shall be requested to designate the third appraiser.

[fol. 166] (b) The following principles shall govern the appraisal:

(i) No value shall be given such land on account of the existing or prospective possibility of securing water from the project.

(ii) The value of improvements on the land at the time of said appraisal shall be included therein, but shall also be set forth separately in such appraisal.

(c) The cost of the first two appraisals shall be paid by the United States.

(d) Any improvements made or placed on the appraised land after the appraisal hereinabove provided for prior to sale of the land by a large landowner may be appraised in like manner.

(e) Excess irrigable lands sold by a large landowner within Santa Barbara shall not carry the right to receive water made available hereunder or under the Master Contract for such land and Santa Barbara agrees to refuse to deliver or permit the delivery of such water to land so sold until, in addition to compliance with the other provisions

hereof, a verified statement showing the sale price upon any such sale shall have been filed with the Agency.

(f) Santa Barbara agrees to take all reasonable steps requested by the contracting officer and the Agency to ascertain the occurrence and conditions of all sales of [fol. 167] irrigable land of large landowners in Santa Barbara and annually to inform the United States and the Agency concerning the same.

(g) A true copy of this and the Master Contract and of each appraisal made pursuant thereto shall be maintained on file in the office of the Agency a d in the office of Santa Barbara, and like copies shall be forwarded to such principal office of the Bureau of Reclamation as may be established hereafter in connection with the project and shall be made available for examination during the usual office hours by all persons who may be interested therein.

EXCESS LAND

26. (a) As used herein the term "excess land" means that part of the irrigable land within Santa Barbara in excess of 160 acres held in the private beneficial ownership of any single person; or in excess of 320 acres held in the beneficial ownership of husband and wife as tenants-in-common, by the entirety, as joint tenants, or as community property; the term "large landowner" means an owner of excess land and the term "nonexcess land" means all irrigable land within Santa Barbara which is not excess land as defined herein.

(b) Each large landowner as a further condition precedent to the right to receive water for any of his excess land shall:

(i) Before any water is furnished Santa Barbara [fol. 168] to or for his excess land within Santa Barbara, execute a valid recordable contract in form satisfactory to the Secretary, agreeing to the provisions of Articles 24, 25 and 26 of this contract and Articles 25, 26 and 27 of the Master Contract and agreeing to dispose of his excess land in accordance therewith to persons who can take title thereto as nonexcess land as

herein provided and at a price not to exceed the approved, appraised value of such excess land and agreeing further that if said land is not so disposed of within a period of ten (10) years after the date of the execution of said recordable contract the Secretary shall have the power to dispose of said land subject to the same conditions on behalf of such large landowner; and Santa Barbara agrees that it will refuse to deliver water to any large landowner other than for his nonexcess land within Santa Barbara until such owner meets the conditions precedent herein stated.

(ii) Within thirty (30) days after the date of notice from the United States requesting such large landowner to designate his irrigable land within Santa Barbara which he desires to designate as nonexcess land, file in the office of Santa Barbara, in triplicate, one copy thereof to be furnished by Santa Barbara to the Bureau of Reclamation, and one copy to the Agency, his writ-[fol. 169] ten designation and description of lands so selected to be nonexcess land and upon failure to do so, Santa Barbara shall make such designation and mail a notice thereof to such large landowner, and in the event Santa Barbara fails to act within such period of time as the contracting officer considers reasonable, such designation will be made by the contracting officer who will mail a notice thereof to Santa Barbara and the large landowner. The large landowner shall become bound by any such action on the part of Santa Barbara or the contracting officer and Santa Barbara will deliver water only to the land within its boundaries so designated to be nonexcess land.

Amendment of Federal Reclamation Laws

27. In the event that the Congress of the United States repeals the so-called excess-land provisions of the Federal reclamation laws, Articles 24, 25 and 26 of this contract will no longer be of any force or effect. In the event that the Congress amends the excess-land provisions or any other provisions of the Federal reclamation laws the Agency agrees, at the option of Santa Barbara, insofar as the rights

of other member units and the Agency are not prejudiced thereby, to amend by language to be mutually agreed upon by the United States, the Agency and Santa Barbara the appropriate articles of this and the Master Contract, all [fol. 170] consistently with the provisions of such repeal or amendment.

CONTRACT BETWEEN AGENCY AND UNITED STATES

28. (a) This contract between the Agency and Santa Barbara shall be subject to the terms of the Master Contract, and insofar as this contract involves water to be furnished by the United States pursuant to the Master Contract, Santa Barbara agrees to the provisions of the Master Contract.

(b) In the event that within one year after the execution of the Master Contract, there have not been executed contracts between the Agency and member units which in the aggregate will provide for the disposition of at least 8100 acre-feet per year of the water to be made available pursuant to the Master Contract by the United States during the first period thereof, then this contract shall be of no force or effect. If this and the Master Contract become effective but not all of the proposed member units named in sections (i) to (n), both inclusive, of Article 9 hereof execute such contracts with the Agency, then any provisions hereof relating to any such proposed member unit not executing such an Agency contract shall be disregarded and shall be given no force or effect and shall not create any right or liability in favor of or against Santa Barbara, the United States, the Agency, any governmental unit, city, district, person, corporation or association whether a party hereto or not.

[fol. 171] EXISTING WATER RIGHTS

29. Subject to agreement between the Agency and Santa Barbara:

(a) The water from the Santa Ynez River to be conserved, distributed and used by means of the Cachuma Unit, other than water obtained by means of tunnels in the Santa Ynez Mountain Range, and to be furnished Santa

Barbara under this contract, and to be furnished any member unit by the Agency shall be water which, at the time of the appropriation thereof by the United States, was or shall be available for appropriation under the laws of the State of California. The established water rights of Santa Barbara and Montecito, whether such rights are presently fully developed or not, are hereby recognized by the Agency, and shall be preserved notwithstanding the execution of this contract or of any provision of this contract to the contrary, or any operation or use hereunder.

(b) Santa Barbara and Montecito shall not be required to deliver or transfer to the United States, the Agency, the Cachuma Unit, or to any person or entity entitled to water therefrom any water or water rights to which Santa Barbara or Montecito is entitled under their established water rights.

(c) The Agency hereby recognizes and agrees not to take, restrict, impair or interfere with any or all of said pres- [fol. 172] ently established rights to water for present use and future development based upon such rights.

CONTINGENT UPON APPROPRIATIONS OR ALLOTMENTS OF FUNDS

30. The expenditure of any money or the performance of any work or service by the United States provided for in the Master Contract which may require appropriations of money by Congress or the allotment of funds, shall be contingent upon such appropriations or allotments being made. The failure of Congress so to appropriate funds or the failure of an allotment of funds shall not relieve Santa Barbara from any obligations under this contract and no liability shall accrue to the Agency in case such funds are not so appropriated or alloted: *Provided*, That in the event that water deliveries are halted or curtailed as a result of such failure to appropriate or allot funds, the obligation of Santa Barbara to make payments pursuant to this contract shall be reduced to the extent of such halting or curtailment of service.

FAILURE OF UNITED STATES TO PERFORM

31. The Agency shall not be liable for failure to perform any portion of this contract to the extent that such failure is caused by the failure of the United States to perform any obligation imposed on the United States by the Master Contract: *Provided,* That the obligations of Santa Barbara [fol. 173] hereunder shall be reduced to the extent that the Agency is prevented from performing as aforesaid: *Provided, further,* That the Agency shall diligently and promptly pursue all rights and remedies available to it to enforce the rights of the Agency and its member units against the United States under the Master Contract relative to such failure to perform.

NOTICES

32. Any notice or announcement which the provisions hereof contemplate shall be given to one of the parties hereto by the other shall be deemed to have been given when deposited in the United States Post Office at Santa Barbara in a postage prepaid registered envelope addressed to the "Santa Barbara County Water Agency, Court House, Santa Barbara, California" if the Agency is being given notice, and to "City of Santa Barbara, City Hall, Santa Barbara, California" if Santa Barbara is being given notice, or such other addresses as from time to time may be designated by either party in a written notice to the other: *Provided,* however, That this Article shall not preclude the effective service of any such notice or announcement by other means.

ASSIGNMENT

33. The provisions of this agreement shall apply to and bind the successors and assigns of the respective parties and Santa Barbara may assign any or all of its interests herein subject to the provisions of Section 5.6 of the Santa Barbara [fol. 174] County Water Agency Act, but no assignment or transfer of this contract or any part thereof or interest therein shall be valid until and unless approved by the Secretary. In the case of such an assignment by Santa Barbara, at the option of the Agency, Santa Barbara may

be required to guarantee payments by the assignee member unit of any obligation owing the Agency in connection with the assigned interest. No sale or other disposal by Santa Barbara for use outside of Santa Barbara as now or hereafter constituted or another member unit of any water, or the right to the use thereof, furnished to Santa Barbara pursuant to this contract, shall be valid.

DUTIES OF AGENCY

34. The Agency hereby covenants and agrees to promptly and completely fulfill its obligations under this and the Master Contract and to apply and pay to the United States for credit against obligations of the Agency for Santa Barbara under the Master Contract, all sums received by the Agency from Santa Barbara hereunder.

ASSURANCES RELATING TO VALIDITY OF CONTRACTS—LITIGATION

35. Promptly after the execution and delivery of this contract the Agency shall file or cause to be filed and prosecute or cause to be prosecuted to a final decree, including any appeal therefrom, an action at law, or in equity or a special proceeding for the judicial examination, approval; [fol. 175] and confirmation of the proceedings had for the organization of the Agency and the proceedings of the Board of Directors of the Agency and the proceedings of the Agency leading up to and including the making of this contract and the validity of the provisions thereof. Prior to instituting or defending any action in law or equity or any special proceeding, the Agency shall give written notice thereof to Santa Barbara in order that Santa Barbara may take such measures as Santa Barbara deems necessary to protect Santa Barbara's interests, if any, in such action or proceeding.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their names the day and year first hereinabove written.

SANTA BARBARA COUNTY WATER AGENCY

By T. A. TWITCHELL
Chairman, Board of Directors

Attest:

J. E. LEWIS
Clerk of said Agency
(Seal of Santa Barbara
County Water Agency)

CITY OF SANTA BARBARA, a Municipal Corporation

By

NORRIS MONTGOMERY
Mayor

(Seal of the City of
Santa Barbara)

[fol. 176] Approved and Countersigned:

F. O. BOHNETT
STEWART S. MAITLAND
W. D. MAC GILLIVRAY

Approved:

HENRY T. BAILEY
City Attorney

The foregoing contract is hereby approved this 29th day of November, 1949.

NORRIS MONTGOMERY
Mayor

The foregoing contract is hereby approved as to form and legality this 15th day of September, 1949.

HENRY T. BAILEY
City Attorney

[fol. 177] The foregoing Contract was ordered executed by the City of Santa Barbara, by the electors of said City, at a Special Municipal Election held November 22, 1949, and was duly executed by City of Santa Barbara officials

at a Special Meeting of the City Council held November 29th, 1949, 2:00 P.M.

/s/ Faye Griffen
FAYE GRIFFEN, CITY CLERK
CITY OF SANTA BARBARA, CALIFORNIA

(SEAL OF THE CITY OF SANTA BARBARA)

[fol. 416] EXHIBIT "G" TO COMPLAINT, ETC.

SANTA BARBARA COUNTY WATER AGENCY

CONTRACT FOR THE FURNISHING OF WATER TO MONTECITO COUNTY WATER DISTRICT

1. THIS CONTRACT, made this 12th day of September, 1949, at and in the County of Santa Barbara, State of California, between THE SANTA BARBARA COUNTY WATER AGENCY, herein styled "the Agency", established by Chapter 1501 of the 1945 Statutes of California, as amended, and the MONTECITO COUNTY WATER DISTRICT, herein styled "Montecito", a political subdivision of the State of California, duly organized and existing under the County Water District Act, being Chapter 592 of the 1913 Statutes of California, as amended,

WITNESSETH THAT:

EXPLANATORY RECITALS

2. WHEREAS, the City of Santa Barbara, the Carpinteria County Water District, the Goleta County Water District, the Montecito County Water District, the Summerland County Water District and the Santa Ynez River Water Conservation District are "Districts" lying within the Agency as defined by subdivision (f) of section 2 of the Santa Barbara County Water Agency Act, and it is contemplated that said Districts will become "member units" [fol. 417] of the Agency, as defined in and by the Santa Barbara County Water Agency Act, with respect to that

certain contract between the United States and the Agency bearing the date of the 12th day of September, 1949, (which contract is hereinafter styled the "Master Contract"), a copy of which is attached hereto, marked Exhibit "A", and by reference made a part hereof; and

3. WHEREAS, the lands and inhabitants within the Agency and within each and all of said Districts, including Montecito, are in critical need of additional water for municipal, domestic and irrigation uses; and

4. WHEREAS, investigations of the present water supply indicate that irigated and irrigable lands within the boundaries of the Agency and of said Districts, including Montecito, are at present in need of additional water for irrigation and certain areas have a potential need of water for irrigation and certain areas require a new or supplemental supply of water for municipal and miscellaneous purposes for present and future needs, and that ground water supplies are seriously depleted and in need of replenishment and that a supplemental water supply to meet these present and potential needs can be made available by and through the works to be constructed by the United States under said Master Contract; and

5. WHEREAS, investigations of the stream flow in the Santa Ynez River and its tributaries and present and [fol. 418] future requirements for beneficial uses indicate that there will be available, for furnishing for the use and benefit of said member units, including Montecito, a supplemental water supply from Cachuma Unit for irrigation, municipal, industrial and domestic uses; and

6. WHEREAS, the United States proposes to construct the Cachuma Unit of the Santa Barbara County Project, said unit to consist of Cachuma Dam and Reservoir, designed to have water storage capacity commensurate with the water supply requirements of the Master Contract, Tecolote Tunnel and the South Coast Conduit, for diversion, storage, carriage and distribution to member units of waters of the Santa Ynez River and its tributaries and water developed in Tecolote Tunnel for irrigation; municipal, domestic, industrial and other beneficial uses and purposes as authorized by means of a report by the Secretary of the Interior,

dated December 22, 1947, and approved and adopted January 7, 1948, (see House Document No. 587, 80th Congress, 2nd Session), the total estimated cost of the proposed construction at cost levels as of the date of said report being $28,610,000; and

7. WHEREAS, the United States and the Agency, pursuant to the provisions, among others, of sections 9(c)(2) and 9(e) of the Reclamation Project Act of 1939, have executed the Master Contract whereby the Agency will be furnished by the United States a water supply from the Cachuma Unit for the use and benefit of the Agency's said member [fol. 419] units, including Montecito; and

8. WHEREAS, Montecito desires to contract with the Agency for the furnishing by the Agency of a water supply from the Cachuma Unit to and for the use and benefit of Montecito, for which Montecito will make payment to the Agency or to the United States upon the basis, at the rates and pursuant to the conditions in this contract hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby agreed by the parties hereto as follows:

DEFINITIONS

9. When used herein, unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the term:

(a) "Secretary" of "Contracting Officer" shall mean the Secretary of the United States Department of the Interior or his duly authorized representative;

(b) "Initial delivery date" shall mean the date on which water will be available for furnishing by the United States pursuant to subdivision (a) of Article 11 of the Master Contract by means of the Cachuma Unit and which shall be announced in advance by the Secretary to the Agency in writing;

[fol. 420] (c) "Year" shall mean the period from May 15 through May 14, both dates inclusive;

(d) "Municipal water" shall mean water furnished or to be furnished from Cachuma Unit (i) to or used by or in Santa Barbara, or (ii) to or used by or in any incorporated city, or (iii) to or used by or in any "municipal area" as said term "municipal area" is defined in Article 13 of this contract;

(e) "Irrigation water" shall mean water furnished or to be furnished from Cachuma Unit to member units to be used or used for beneficial purposes other than those specified in subdivision (d) of this Article;

(f) "Member unit" shall mean any district as defined in and by the Santa Barbara County Water Agency Act which enters into a contract with the Agency for the payment for water to be furnished to such member unit by the Agency or the United States pursuant to the Master Contract;

(g) "Interim period" shall mean the period commencing with the initial delivery date and extending through May 14 of the fourth year after the year in which the initial delivery date occurs;

(h) "Period" shall mean each of the last seven consecutive five-year periods of the term of this contract, the first of which will commence on May 15 immedi- [fol. 421] ately following the close of the interim period, and which periods shall be identical with the periods defined in the Master Contract;

(i) "Santa Barbara" shall mean the City of Santa Barbara;

(j) "Goleta" shall mean the Goleta County Water District;

(k) "Summerland" shall mean the Summerland County Water District;

(l) "Montecito" shall mean the Montecito County Water District;

(m) "Carpinteria" shall mean the Carpinteria County Water District;

(n) "Santa Ynez" shall mean the Santa Ynez River Water Conservation District;

(o) "Santa Barbara County Water Agency Act" shall mean the Santa Barbara County Water Agency Act, passed by the California Legislature and approved July 18, 1945, as now or hereafter amended.

(p) Whenever hereunder the Agency is to furnish or deliver water to Montecito or other member units, the delivery or furnishing of such water to Montecito, or other member units, from the Cachuma Unit by the United States shall be construed as furnishing or delivery by the Agency.

[fol. 422] TERM OF CONTRACT

10. This contract shall become effective upon its execution and, subject to the limitations of Article 29(b) hereof, shall remain in effect for a period of forty (40) years commencing with the year in which the initial delivery date occurs: *Provided*, That in the event the Congress of the United States during the term of the Master Contract enacts legislation permitting the renewal or extension of the Master Contract, and the Agency, at its option, extends or renews the Master Contract in conformance with and subject to the terms of the then existing law, then Montecito, at its option, may extend or renew this contract in conformance with and subject to the terms of the then existing law, and subject to the terms of the Master Contract as so extended or renewed: *Provided, further*, That whenever the Master Contract is terminated in the manner and for the cause or causes specified in the Master Contract this contract shall terminate.

WATER TO BE FURNISHED BY UNITED STATES AND AGENCY

11. (a) To the extent that water and the facilities necessary for furnishing such water to member units are available therefor, as determined by the contracting officer, the Agency shall furnish to Montecito each year during [fol. 423] the interim period, and Montecito each year

during such interim period shall pay to the Agency, which in turn shall pay to the United States, for such quantities of water as are specified in a schedule submitted by Montecito to the Agency in accordance with Article 12 for each such year.

(b) Each year the Agency shall furnish to, and Montecito shall pay to the Agency for, which in turn shall pay to the United States for Montecito:

500 acre-feet of water during the first period.
1,000 acre-feet of water during the second period.
1,500 acre-feet of water during the third period.
1,900 acre-feet of water during the fourth period.
2,400 acre-feet of water during the fifth period.
2,800 acre-feet of water during the sixth period.
2,900 acre-feet of water during the seventh period.

(c) While the Cachuma Unit has been designed to serve the present and future reasonable beneficial needs and uses of the member units, and while this contract has been executed to serve the present and future beneficial needs and uses of Montecito, there may be temporarily available at times, for reasons beyond the control of the contracting parties hereto, quantities of water in excess of the amounts necessary for the Agency to meet its obligations under this and other member unit contracts. Each year in which there [fol. 424] is such surplus water available from Cachuma Unit, as determined by the contracting officer, the Agency shall offer, at rates not to exceed those specified in Article 13 hereof, such water to all member units, including Montecito, and the Agency is prohibited from selling such water to any but a member unit. Montecito may purchase during any such year all or part of such water, subject to the limitations of Article 11(d): *Provided*, That in the event Montecito does not indicate to the Agency in writing its desire to accept and pay for such surplus water within fifty (50) days after receiving written notice from the United States or the Agency of its availability, Montecito's right to purchase such water during the respective year shall terminate: *Provided, further*, That in the event the United States in any year sells or furnishes any such

surplus water to others than a member unit, the Agency, in accordance with the Master Contract, shall take such measures as are necessary (i) to prevent such water from being sold by the United States at a rate which is less than that offered to the Agency for the benefit of its member units, (ii) to provide that the Contract between the United States and such other party shall expressly provide that the Agency and the member units shall have a prior right to such water in the event of a shortage and that the right of further service to such other party shall be subject to the present and future needs of the [fol. 425] member units for quantities of water in excess of those stipulated herein and in the Master Contract, (iii) to provide that each such contract between the United States and party other than the Agency and a member unit shall be for a term of no longer than one year, and (iv) to provide that revenues derived by the United States in excess of the costs of operation and maintenance from the sale of all such surplus water, whether to a member unit or otherwise, shall be credited to the construction cost of the Cachuma Unit.

(d) In the event that member units desire to purchase more of the excess water specified in Article 11(c) than is available, Montecito shall be entitled to purchase that portion of the available supply as the amount of water specified for Montecito by Article 11(b) of the Master Contract in that year from Cachuma Unit bears to the amount of water specified by said Article 11(b) of the Master Contract in that year for all member units desiring to purchase such excess water in that year from Cachuma Unit: *Provided*, That if any member unit has assigned to Montecito any of such member unit's right to receive water specified in said Article 11(b) of the Master Contract, the right of Montecito to purchase excess water shall be correspondingly increased.

TIME FOR DELIVERY OF WATER

12. (a) On or before March 15, preceding each year [fol. 426] during the interim period the contracting officer will notify the Agency in writing of his estimate of the

quantity of water which will be available from the Cachuma Unit during the ensuing year, which estimate may be revised from time to time by the contracting officer during such year. Within seven (7) days after receipt of such notice, or any revision thereof, the Agency shall transmit a true copy thereof to Montecito.

(b) Except as provided in subdivision (c) of this Article, Montecito shall submit in writing to the Agency on or before March 10 of each year during the term of this contract a schedule, subject to the provisions of Article 11 hereof and in form satisfactory to the Agency and the contracting officer, indicating the desired times and quantities for the delivery of water to Montecito pursuant to said Article 11 during the following year. The Agency shall, within the provisions hereof, make all reasonable effort to deliver said water in accordance with said schedule, or any revision thereof submitted by Montecito within a reasonable time before the desired change, if any, of time for delivery. If in any year during the interim period the contracting officer notifies the Agency that he has revised his estimate of the quantity of water which will be available from the Cachuma Unit during such year, the Agency within seven (7) days of the receipt of such notice, shall transmit a true copy of such notice to Montecito, and [fol. 427] Montecito, within a reasonable time thereafter, may revise its schedule to avail itself of any increased supply of water or to conform with any decreased supply of water.

(c) Within seven (7) days after the Agency has received written notice from the contracting officer of his estimate of the quantity of water which will be available from the Cachuma Unit during the portion of the interim period beginning with the initial delivery date and ending on the following May 15, the Agency shall transmit a true copy of such notice to Montecito. Montecito, within a reasonable time after receipt by it of such notice, shall submit a schedule indicating the desired times and quantities for the delivery of water for such portion of the interim period.

RATE AND METHOD OF PAYMENT FOR WATER

13. (a) The rate or rates to be paid by Montecito for water furnished hereunder, and which Montecito hereby agrees to pay, shall be the rate or rates announced each year by the contracting officer in accordance with the provisions of Article 13(a) of the Master Contract for water to be furnished Montecito during the subsequent year (hereinafter called the "gross rate or gross rates"), less the discount, if any, hereinafter provided for, (hereinafter called "the discount"), which resultant rate to be paid [fol. 428] by Montecito shall be known as the "net rate or net rates". In no event shall either the gross or the net rates so established for any year during the term of this contract be in excess of Ten Dollars ($10.00) per acre-foot for irrigation water for Santa Ynez, nor Twenty-five Dollars ($25.00) per acre-foot for irrigation water for Montecito, Carpinteria, Goleta and Summerland, nor Thirty-five Dollars ($35.00) per acre-foot for municipal water: *Provided*, That neither the gross nor net rates for irrigation water nor municipal water shall include an interest component. In the event the contracting officer announces gross rates for any year which are less than the maximum rates herein provided for, the gross rates so announced shall be in the ratio of Thirty-five Dollars ($35.00) per acre-foot for municipal water, Twenty-five Dollars ($25.00) per acre-foot for irrigation water for Summerland, Carpinteria, Goleta and Montecito, and Ten Dollars ($10.00) per acre-foot for irrigation water for Santa Ynez.

(b) Notwithstanding any other provisions of this contract:

(i) The net rate fixed pursuant to subdivision (a) of this Article for municipal water shall be paid by Montecito to the Agency for all water furnished by the Agency pursuant to this contract to Montecito which is delivered to users within or used within boundaries of any incorporated city;

[fol. 29] (ii) The net rates for irrigation water for Montecito, fixed as provided in subdivision (a) of this

Article, shall be paid by Montecito for all water furnished to it: *Provided*, That whenever there shall exist within Montecito a municipal area or municipal areas as hereinafter defined, then, during the period that such municipal area or municipal areas exist within Montecito, Montecito shall pay to the Agency for the water furnished by the Agency pursuant to this contract, to Montecito upon the following basis:

A. The net rate fixed for municipal water, as provided in subdivision (a) of this Article, shall be paid by Montecito to the Agency for that portion of the total quantity of water required to be furnished to Montecito by the Agency during the respective year, pursuant to Article 11 hereof, which bears the same ratio to such total quantity of water required to be delivered, as aforesaid, to Montecito during such year, as the aggregate acreage of municipal areas within Montecito bears to the total acreage of Montecito, and the remaining portion of the water furnished or to be furnished hereunder by the Agency during such year shall be paid by Montecito at the net rate fixed, as provided in subdivision [fol. 430] (a) of this Article, for irrigation water for Montecito.

B. After receipt by the Agency of the notice furnished by the contracting officer pursuant to Article 12(c) of the Master Contract, and before the initial delivery date, and not less than sixty (60) days prior to and not sooner than one hundred and eighty (180) days prior to each period, the Agency shall determine with respect to Montecito, from the records of Montecito, whether there exists within Montecito an area of not less than three hundred (300) contiguous acres of land in which there exists an average of more than one water consumer service connection per acre. If any such area or areas are found by the Agency to exist, each such area shall be designated by the Agency as a "municipal area" and shall be given a suitable name, which shall be chosen by the governing body of Montecito,

and the Agency promptly will notify the United States thereof. No area within one municipal area shall be included within any other municipal area. Each municipal area so designated by the Agency prior to the initial delivery date shall for the purposes of this agreement be deemed to be a municipal area during the interim period and each mu- [fol. 431] nicipal area so designated by the Agency as herein provided during or after the interim period shall be deemed a municipal area for the period next commencing after such determination, it being intended that after the interim period no such determination shall be effective for more than one period.

(c) Montecito each year shall be entitled to a discount per acre-foot on the rates announced by the contracting officer for the water furnished to it under the provisions of Article 11(b) of this contract, whether irrigation or municipal, computed as follows: The rate announced by the contracting officer for irrigation water for Montecito for such year shall be multiplied by $100,000, and the figure thus obtained shall be divided by the total sum due the United States for all water specified in Article 11(b) of the Master Contract for such year, including any water for Santa Ynez for such year for which the option specified in (vi) of said Article is exercised. Montecito each year during the interim period shall be entitled to a discount per acre-foot on the rates announced by the contracting officer for water furnished to it during such year computed as follows: The rate announced by the contracting officer for irrigation water for Montecito for such year shall be multiplied by $100,000 and the figure thus obtained shall be divided by the total sum due the United States for all water [fol. 432] furnished to all member units during such year. Each year, at the time Montecito's payment is first due the Agency for water to be furnished Montecito that year, the Agency shall credit Montecito's account with the total discount due Montecito for such year. In the event Montecito in any year, including the interim period, does not utilize its full discount by failure of the delivery to it of all the

water specified in Article 11(b) for that particular year, Montecito shall be entitled to apply the unused portion of said discount on the purchase in any succeeding year or years during the term of this contract of either water specified in Article 11(b) or surplus water. Except as in the preceding sentence specified, no discount shall be allowed on the purchase of surplus water.

(d) Notwithstanding anything in this contract to the contrary:

(i) The aggregate discounts each year for all member units executing contracts with the Agency within the time specified in Article 29(b) hereof, shall not exceed the sum of $100,000.

(ii) Subject to the foregoing limitation, the Agency shall not during the existence of this nor the Master Contract pay, credit or allow in any year any such aggregate discounts in excess of an amount which can be financed by the total of Agency funds then on hand and available for such [fol. 433] purpose plus funds raised by the levy for such year of an Agency tax not exceeding .10¢ on each $100 of assessed valuation of all property in the Agency.

(iii) If, during the existence of this or the Master Contract, the Agency executes member unit contracts relative to a project other than Cachuma Unit, the aggregate each year of all payments and contributions under Section 10.2 of the Santa Barbara County Water Agency Act ot or for all member units shall not exceed in such year an amount which can be financed for such year by Agency funds then on hand and available for such purpose plus funds raised in such year by the Agency tax specified in (ii) hereof.

(iv) If member unit contracts are executed by the Agency during the existence of this or the Master Contract relative to a project other than Cachuma Unit, and because of the limitations imposed by (ii) and (iii) hereof, sufficient money cannot be obtained by the Agency in any year to fully pay or credit all member units all sums otherwise due them in such year from the Agency for the pur-

poses specified in said section 10.2 of said Act, then the Agency in such year shall pay to or credit the member units specified in Article 29(b) of this contract on account of their aggregate discounts for such year, a sum equal to two-thirds (⅔) of the Agency funds then on hand and available for such purpose plus funds raised by the levy [fol. 434] for such year of an Agency tax at the rate of 6⅔¢ on each $100 of assessed valuation of all property in the Agency: *Provided*, That if one-third (⅓) of the Agency funds then on hand and available for such purpose plus funds raised by the levy for such year of an Agency tax at the rate of 3⅓¢ on each $100 of assessed valuation of all property in the Agency are in excess of the sum necessary for the Agency to fulfill its contractual obligations for such year under said section 10.2 of said Act with reference to member units executing contracts with the Agency relative to a project other than Cachuma Unit, then the Agency must use in such year all such excess funds for the payment of discounts of the member units specified in Article 29(b) of this contract.

(v) If, because of the limitations contained in subdivision (d) of this Article, the total of such available and tax raised funds for any year for the member units' discounts specified in (i) hereof is less than $100,000, the amount of such total shall be substituted for the figure $100,000 wherever it appears in Article 13(c) hereof for the purpose solely of computing Montecito's discount for such year.

(e) The Agency will collect the net rates from each member unit or units for water required to be furnished by the Agency to such member unit pursuant to the Agency contract with such member unit. Each year the Agency will [fol. 435] pay to the United States in advance of the delivery of water to a member unit the amount due to the United States for the quantity of water to be delivered to the member unit during such year. Such payment shall be made by the Agency on or before May 15 or such other date, prior to the time for the commencement of delivery of water to the respective member unit of the respective year, as may be specified by the contracting officer in written notice to the Agency.

(f) Montecito will pay the Agency each year in advance of delivery of water to Montecito the amount due the Agency hereunder for the quantity of water to be delivered to Montecito during such year. Such payment shall be made by Montecito on or before May 10 or five (5) days prior to such other date, prior to the time for commencement of delivery of water to Montecito of the respective year, as may be specified by the contracting officer in written notice to the Agency: *Provided*, That such payment can be made by Montecito directly to the United States and the sum thus paid will be credited on the amount due the United States from the Agency under the provisions of the Master Contract for water furnished to Montecito.

(g) In the event Montecito fails or refuses to accept delivery of water available for delivery to Montecito, pursuant to Article 11(b) of this contract, or in the event that Montecito, in any year during the first through the [fol. 436] seventh periods, fails to submit a schedule for delivery as provided in Article 12 of this contract, said failure or refusal shall not relieve Montecito of its obligation to pay for said water, and Montecito agrees to make payment therefor to the Agency or the United States in the same manner as if said water had been delivered to and accepted by Montecito.

(h) Any difference between the net rate or net rates and the rates due the United States for water furnished Montecito under this or the Master Contract shall be the obligation and liability of the Agency, and the Agency hereby promises to pay the same if, as and when the same are due.

POINTS OF DELIVERY, MEASUREMENT, AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

14. (a) All water for Montecito will be delivered at South Coast Conduit at such points within the boundaries of Montecito as may be mutually agreed upon in wriging by the contracting officer and the Agency, but in reaching such agreement the Agency shall act only in accordance with the instructions of Montecito: *Provided*, That in the event

the United States shall have reached the construction of the portion of said conduit, which probably will embrace such points, and the location has not been so agreed upon, such points shall be established at locations as in the [fol. 437] determination of the contracting officer will best serve the needs of Montecito.

(b) All water delivered pursuant to this contract shall be measured by the United States at each point of delivery established pursuant to subdivision (a) of this Article and with equipment installed, operated, and maintained by the United States. Upon the written request of Montecito, the Agency will require that the accuracy of such measurements as to Montecito be investigated by the contracting officer and any errors appearing therein adjusted.

(c) The Agency shall not be responsible for the control, carriage, handling, use, disposal or distribution of water which has been delivered to Montecito by the United States or the Agency, nor for damage or claim of damage of any nature whatsoever for which there is legal responsibility, including, but not limited to, property damage, personal injury or death arising out of or connected with the control, carriage, handling, use, disposal or distribution of such water: *Provided*, That this contract is subject to the right reserved in the Master Contract by the United States to all waste, seepage and return flow water, except sewage water, derived from water furnished Montecito, and which escapes or is discharged beyond the Agency's boundaries and nothing herein shall be construed as an abandonment or relinquishment by the United States of any such water, [fol. 438] but this shall not be construed as claiming for the United States or the Agency any right, as waste, seepage or return flow, to water being used pursuant to this contract for surface irrigation or underground storage within the boundaries of Montecito by Montecito or by those claiming by, through or under Montecito.

AGENCY AND UNITED STATES NOT LIABLE FOR WATER SHORTAGE

15. (a) There may occur at times a shortage during any year in the quantity of water available for furnishing to Montecito by the Agency pursuant to this contract, through and by means of the Cachuma Unit, and in no event shall any liability accrue against the Agency or the United States or any of their respective officers, agents or employees for any damage, direct or indirect, arising from a shortage on account of drought, unavoidable causes, or errors in operation, except wilful misconduct or gross negligence. In any year in which there may occur a shortage from any cause, the Agency and the United States shall apportion the available water supply among the member units entitled, under existing and future contracts including this contract and the Master Contract, to receive water from Cachuma Unit in accordance with the conclusive determination of the contracting officer as follows:

[fol. 439] (i) A determination shall be made of the total quantity of water from Cachuma Unit agreed to be furnished by the United States during the respective year under the Master Contract to all member units, including the amount of water with respect to which the Agency has exercised its option pursuant to Article 11(b)(vi) of the Master Contract, for such year for Santa Ynez, the amount so determined being herein referred to as the contractual commitments.

(ii) A determination shall be made of the total quantity of water which is available to the United States from Cachuma Unit for meeting contractual commitments, the amount so determined being herein referred to as the available supply.

(iii) The total quantity of water agreed to be furnished to each member unit during the respective year, under Article 11 of the Master Contract, shall be divided by the contractual commitments, the quotient thus obtained being herein referred to as the contractual entitlement.

(iv) The available supply shall be multiplied by the contractual entitlement of each member unit and the result

shall be the quantity of water required to be delivered by the Agency to the respective member unit during such year, but in no event shall such amount exceed the total quantity of water agreed to be furnished to such member unit and paid for by the Agency pursuant to Article 11 of the Master [fol. 440] Contract. Within seven (7) days of the receipt by the Agency from the contracting officer of notice of an actual or probable shortage, the Agency will transmit a true copy of such notice to Montecito. In the event that in any year there is delivered to Montecito, by reason of any such shortage or apportionment, or any failure, discontinuance, or reduction of service as set forth in subdivisions (b) or (c) of this Article, less than the quantity of water which Montecito otherwise would have been entitled to receive under the Master or this contract, and for which payment has been made by Montecito to the Agency, the amount of any such overpayment shall be applied first to any accrued indebtedness arising out of this contract by Montecito to the Agency, and any amount of such overpayment then remaining shall, at the option of Montecito, be refunded or credited upon amounts to become due to the Agency from Montecito under the provisions of this contract in the ensuing year. To the extent of such deficiency arising from errors in operation, or drought or other unavoidable causes or any discontinuance or reduction of service as set forth in subdivision (c) of this Article, such adjustment shall constitute the sole remedy of Montecito or any one having or claiming to have by, through or under Montecito, the right to the use of any of the water supply provided for herein or in the Master Contract.

(b) Notwithstanding any provision of this contract to [fol. 441] the contrary, the Agency shall not be obligated to furnish water to Montecito pursuant to this contract unless and until the construction by the United States of facilities to the extent required for the furnishing of the water to Montecito has been completed as conclusively determined by the contracting officer.

(c) By virtue of authority and in accordance with the provisions contained in the Master Contract, the United States may temporarily discontinue or reduce the amount

of water to be furnished to Montecito as herein or in the Master Contract provided for the purposes of such maintenance, repair or replacement and investigations and inspections in connection therewith and preliminary thereto as may be necessary of any of the project facilities necessary for the furnishing of water to Montecito or any part thereof, but so far as feasible the Agency will give Montecito due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. In the event of any such discontinuance or reduction, the Agency and the United States will, upon the resumption of service, deliver, as nearly as may be feasible, the quantity of water which would have been furnished to Montecito in the absence of such contingency.

STORAGE OF WATER

16. (a) To the extent that storage space is available [fol. 442] therefor, the Agency, upon the request of Montecito, shall withhold delivery of and store in Cachuma Reservoir for and on behalf of Montecito any water required to be furnished to Montecito by the Agency pursuant to this contract: *Provided*, That if two or more member units request the storage of water in Cachuma Reservoir, the available storage space will be apportioned each year upon the basis of the amount of water each of such member units is entitled to receive pursuant to its contract with the Agency during the year that such storage space is available, and the release from storage of any such stored water because of the unavailability of storage space and deduction of evaporation and seepage losses shall be upon the same proportional basis.

(b) In the event any water is so stored by any member unit or units, including Montecito, and it becomes necessary to release water from Cachuma Reservoir because of the lack of storage capacity or for the purposes of repair or maintenance, or in the event that water spills over Cachuma Dam, all water so released or spilled shall be deemed to be water stored by such member unit or units.

(c) The quantity of water which seeps or evaporates from Cachuma Reservoir shall be determined by the contracting officer and from the total amount of water stored by any and all member units, there shall be deducted an amount of water which bears the same ratio to the [fol. 443] total amount of such loss as the total amount of water so stored by member units bears to the total amount of water in the Cachuma Reservoir above the invert of the mouth of Tecolote Tunnel. Such seepage or evaporation loss shall be apportioned amongst storing member units in accordance with the provisions of subparagraph (a) of this Article.

DISPOSITION OF WATER BY MONTECITO

17. (a) Water furnished by the Agency to Montecito may be delivered by Montecito to other member units without the consent of the Agency: *Provided,* That if Montecito receives from the purchasing member unit a sum for such water which is in excess of the total amount paid or owing to the United States for such water plus the expense, if any, incurred by Montecito in handling such water, Montecito shall pay to the Agency or to the United States the amount of such excess, if any.

(b) Any water furnished by the Agency pursuant to this contract to Montecito and utilized by another member unit as municipal water shall be paid for by Montecito at the rate established pursuant to Article 13 for municipal water, subject to the applicable Montecito discount, if any.

(c) If in any year Montecito sells water to another member unit pursuant to subdivision (a) of this Article, any amounts coming due to the Agency or the United [fol. 444] States as a result thereof shall be paid by Montecito to the United States or to the Agency on or before June 10 of the succeeding year.

AGREED CHARGES FOR MONTECITO TO BE A GENERAL OBLIGATION OF MONTECITO

18. Montecito shall pay to the Agency the sums coming due the Agency as a result of Montecito's obligation to

pay for water available for furnishing to it pursuant to this contract notwithstanding the individual default in the payment to Montecito by individual water users of assessments, tolls or other charges levied by or owing to Montecito, and Montecito agrees to use all of the powers and resources available to it under the laws of the State of California to collect the funds necessary for it to meet its obligations to the Agency under this contract. Obligations of Montecito arising out of or pursuant to incidental to this or the Master Contract shall constitute a general obligation of Montecito and the amounts so coming due shall constitute a general obligation of Montecito notwithstanding the individual default in the payment to Montecito by individual water users of assessments, tolls or other charges levied by or owing to Montecito.

DEFAULTS

19. (a) Should the Agency and Montecito fail to make the payment due to the United States for water to be [fol. 445] furnished to Montecito pursuant to this and the Master Contract, and the Agency and Montecito fail to levy the assessments, tolls or other charges necessary to be levied in order for Montecito and the Agency to meet the Agency's and Montecito's obligation to the United States under this and the Master Contract with respect to Montecito, or having levied, should the Agency and Montecito be prevented from collecting such assessments, tolls or other charges by any judicial proceeding or otherwise fail to collect them, no tract of land within Montecito shall be entitled to receive water furnished by the Agency or the United States pursuant to this or the Master Contract to Montecito, except upon payment by the landowner of such assessment or toll charge.

(b) No water shall be furnished to Montecito during any period in which the Agency is in arrears in the advance payment of charges accrued under the Master Contract with respect to Montecito unless Montecito makes the necessary payment directly to the United States, in which event the Agency shall be relieved of its obligation to make such payment to the United States for such year: *Provided,*

That if Montecito makes any payment (exclusive of any penalty due from Montecito) to the United States under this or the Master Contract for water furnished or to be furnished to Montecito, which payment is in excess of the net rates herein provided for in reference to such water, such payment shall not be deemed to be voluntary, and [fol. 446] the Agency shall, within fifteen (15) days of such payment by Montecito to the United States, repay to Montecito the amount of such excess; and *Provided, further*, That if the Agency, having received full or part payment for an obligation of Montecito hereunder, within a reasonable time fails to deliver such payment to the United States in discharge of or as a credit against an obligation of the Agency for Montecito under the Master Contract, then if Montecito makes a full or part payment to the United States in discharge of or as a credit against such obligation of the Agency, the Agency shall, within fifteen (15) days of the making of such payment by Montecito to the United States, repay to Montecito an amount equal to the amount so paid by Montecito to the United States. No water shall be furnished to Montecito during any period in which Montecito is in arrears in the advance payment of charges accrued under this contract.

(c) No water furnished by the Agency or the United States to Montecito pursuant to this or the Master Contract shall be furnished by Montecito to lands or parties which are in arrears in the payment to Montecito of assessments, rates, tolls or other charges levied or established by Montecito if such assessments, rates, tolls or other charges are necessary for the purpose of raising revenues to meet the payments then due to the United States from [fol. 447] the Agency for Montecito for such water.

(d) The United States may, at its option, terminate all rights of Montecito to the furnished water pursuant to this or the Master Contract on sixty (60) days' written notice to the Agency upon the failure of the Agency and Montecito for two or more successive or cumulative years to make any of the payments required in the Master Contract to be made by the Agency to the United States upon behalf of Montecito at the times and in the manner pro-

vided if the Agency or Montecito do not pay said delinquent charges within such 60-day period. Within one day of the receipt of such notice, the Agency will deliver a true copy to Montecito. If the Agency or Montecito is prevented by legal action from making such payments, the United States may not exercise its right of termination for any failure to make such payments when such failure is occasioned by such legal action, unless by the final judgment in such legal action the Master or this contract is rendered unenforceable or void. Said termination shall be effective on January 1 following the date on which such notice is given to the Agency. Upon the effective date of such termination all obligations of the United States and all rights of the Agency and Montecito with respect to Montecito, of any nature whatsoever arising under this and the Master Contract, shall cease, but such termination shall not relieve Montecito of the obligation to make to [fol. 448] the Agency all such payments becoming due pursuant to this contract prior to the effective date of such termination. No waiver at any time by the United States of its rights with respect to default under any other matter arising in connection with this contract shall be deemed to be a waiver with respect to any subsequent default or matter.

Levy of Taxes and Assessments—Fixing of Rates and Tolls

20. (a) Montecito shall cause to be levied and collected all necessary taxes and assessments and will use all of the authority and resources of Montecito to meet its obligations hereunder, to make in full all payments to be made pursuant to this contract on or before the date such payments become due and to meet its other obligations under this contract.

(b) The Agency shall use all powers and resources available to it by law, including the taxing power of the Agency or the power to levy special assessments to collect and pay to the United States and make payments promptly on the due dates thereof of all amounts which the Agency

by the provisions of this and the Master Contract shall be obligated to pay to the United States.

Penalty Upon Delinquency in Payment

21. Upon each charge to be paid by Montecito to the Agency pursuant to this contract which shall remain unpaid [fol. 449] after the same shall have become due and payable, there shall be imposed a penalty of one-half (½) of one (1) percent per month of the amount of such delinquent payment from and after the date when the same becomes due until paid, and Montecito hereby agrees to pay said penalty.

Montecito to Keep Books and Records and Report Crop and Other Data

22. Montecito shall establish and maintain account and other books and records, adequate to enable the Agency to furnish to the Bureau of Reclamation reports and statements to such extent and in such manner and form as may be prescribed by the Secretary, of information pertaining to (a) accounts and financial transactions of Montecito, to the extent that such information pertains to this and the Master Contract and operations thereunder, (b) crops raised and agricultural or livestock products produced on the land within Montecito, a report thereon for the preceding period of twelve (12) calendar months to be furnished to the Agency annually on or before December 31, or such other date or dates as may be fixed by the Agency.

Inspection of Books and Records

23. Subject to applicable California laws and regulations, the proper officers or agents of Montecito shall have full and free access at all reasonable times to the books and official records of the Agency insofar as the same [fol. 450] pertain to the matters and things provided for in this and the Master Contract, with the right at any time during office hours to make copies thereof, and the proper representatives of the Agency shall have similar rights

in respect to the books and records of Montecito. Upon written request of Montecito to the Agency, the Agency, on behalf of Montecito, will make any and all investigations and inspections of the records of the Bureau of Reclamation permitted under Article 23 of the Master Contract and will promptly furnish Montecito with all the information thereby obtained.

Changes in Organization of Member Units

24. While the Master Contract is in effect with respect to Montecito, no change will be made in Montecito, either by inclusion or exclusion of lands, by partial or total consolidation or merger with another political subdivision of the State, by proceedings to dissolve, or otherwise, except upon the contracting officer's written assent thereto.

Lands Not to Receive Water Until Owners Thereof Execute Certain Contracts

25. (a) No water made available to Montecito, pursuant to this or the Master Contract, shall be furnished to any excess land as defined in Article 27 hereof unless the owners thereof shall have executed a valid recordable contract, in form prescribed by the United States agreeing to the provisions of Articles 25, 26 and 27 of this contract; agree- [fol. 451] ing to the appraisal provided for in Article 26 hereof and that such appraisal shall be made on the basis of the actual bona fide value of such land at the date of the appraisal without reference to the construction of the Cachuma Unit, all as hereinafter provided; and agreeing to the sale of his excess lands under terms and conditions satisfactory to the Secretary and at prices not to exceed those fixed as hereinafter provided. No sale of any excess lands shall carry the right to receive water made available pursuant to this or the Master Contract, unless and until the purchase price involved in such sale is approved by the contracting officer and upon proof of fraudulent representation as to the true consideration involved in such sale the United States may instruct Montecito by written notice to refuse to deliver any water subject to this or the Master Contract to the land involved in such fraudulent sale, and

Montecito thereafter shall not deliver said water to such land.

(b) If project water furnished by the United States to a member unit pursuant to this contract reaches the underground strata of excess land owned by a large landowner who has not executed a recordable contract and the large landowner pumps such project water from the underground, the member unit will not be deemed to have furnished such water to said excess lands within the meaning of this contract, if such water reached the underground strata of the aforesaid excess land as an unavoidable result of the furnishing of project water to nonexcess [fol. 452] land or to excess land with respect to which a recordable contract has been executed.

VALUATION AND SALE OF EXCESS LANDS

26. (a) The value of the excess irrigable land within Montecito, held in private ownership of a large landowner as defined in Article 27 hereof, for the purposes of this contract, shall be determined, subject to the approval thereof by the Secretary, by three appraisers. One of said appraisers shall be designated by the Secretary and one shall be designated by the Agency but the Agency shall be bound to designate as such appraiser one nominated by Montecito, and the two appraisers so appointed shall name the third. If the appraisers so designated by the Secretary and the Agency as aforesaid are unable to agree upon the appointment of the third, the presiding justice of Division Three of the Second District Court of Appeals of the State of California shall be requested to designate the third appraiser.

(b) The following principles shall govern the appraisal:

(i) No value shall be given such land on account of the existing or prospective possibility of securing water from the project.

(ii) The value of improvements on the land at the time of said appraisal shall be included therein, but shall also be set forth separately in such appraisal.

[fol. 453] (c) The cost of the first two appraisals shall be paid by the United States.

(d) Any improvements made or placed on the appraised land after the appraisal hereinabove provided for prior to sale of the land by a large landowner may be appraised in like manner.

(e) Excess irrigable lands sold by a large landowner within Montecito shall not carry the right to receive water made available hereunder or under the Master Contract for such land and Montecito agrees to refuse to deliver or permit the delivery of such water to land so sold until, in addition to compliance with the other provisions hereof, a verified statement showing the sale price upon any such sale shall have been filed with the Agency.

(f) Montecito agrees to take all reasonable steps requested by the contracting officer and the Agency to ascertain the occurrence and conditions of all sales of irrigable land of large landowners in Montecito and annually to inform the United States and the Agency concerning the same.

(g) A true copy of this and the Master Contract and of each appraisal made pursuant thereto shall be maintained on file in the office of the Agency and in the office of Montecito, and like copies shall be forwarded to such principal office of the Bureau of Reclamation as may be established hereafter in connection with the project and shall be made [fol. 454] available for examination during the usual office hours by all persons who may be interested therein.

Excess Land

27. (a) As used herein the term "excess land" means that part of the irrigable land within Montecito in excess of 160 acres held in the private beneficial ownership of any single person; or in excess of 320 acres held in the beneficial ownership of husband and wife as tenants-in-common, by the entirety, as joint tenants, or as community property; the term "large landowner" means an owner of excess land and the term "nonexcess land" means all irrigable land within Montecito which is not excess land as defined herein.

(b) Each large landowner as a further condition precedent to the right to receive water for any of his excess land shall:

(i) Before any water is furnished Montecito to or for his excess land within Montecito, execute a valid recordable contract in form satisfactory to the Secretary, agreeing to the provisions of Articles 25, 26 and 27 of this and the Master Contract and agreeing to dispose of his excess land in accordance therewith to persons who can take title thereto as nonexcess land as herein provided and at a price not to exceed the approved, appraised value of such excess land and agreeing further that if said land is not so disposed of within a period of ten (10) years after the date of [fol. 455] the execution of said recordable contract the Secretary shall have the power to dispose of said land subject to the same conditions on behalf of such large landowner; and Montecito agrees that it will refuse to deliver water to any large landowner other than for his nonexcess land within Montecito until such owner meets the conditions precedent herein stated.

(ii) Within thirty (30) days after the date of notice from the United States requesting such large landowner to designate his irrigable land within Montecito which he desires to designate as nonexcess land, file in the office of Montecito, in triplicate, one copy thereof to be furnished by Montecito to the Bureau of Reclamation, and one copy to the Agency, his written designation and description of lands so selected to be nonexcess land and upon failure to do so, Montecito shall make such designation and mail a notice thereof to such large landowner, and in the event Montecito fails to act within such period of time as the contracting officer considers reasonable, such designation will be made by the contracting officer who will mail a notice thereof to Montecito and the large landowner. The large landowner shall become bound by any such action on the part of Montecito or the contracting officer and Montecito will deliver water only to the land within its boundaries so designated to be nonexcess land.

AMENDMENT OF FEDERAL RECLAMATION LAWS

[fol. 456] 28. In the event that the Congress of the United States repeals the so-called excess-land provisions of the

Federal reclamation laws; Articles 25, 26 and 27 of this contract will no longer be of any force or effect. In the event that the Congress amends the excess-land provisions or any other provisions of the Federal reclamation laws the Agency agrees, at the option of Montecito, insofar as the rights of other member units and the Agency are not prejudiced thereby, to amend by language to be mutually agreed upon by the United States, the Agency and Montecito the appropriate articles of this and the Master Contract, all consistently with the provisions of such repeal or amendment.

CONTRACT BETWEEN AGENCY AND UNITED STATES

29. (a) This contract between the Agency and Montecito, shall be subject to the terms of the Master Contract, and insofar as this contract involves water to be furnished by the United States pursuant to the Master Contract, Montecito agrees to the provisions of the Master Contract.

(b) In the event that within one year after the execution of the Master Contract, there have not been executed contracts between the Agency and member units which in the aggregate will provide for the disposition of at least 8,100 acre-feet per year of the water to be made available pursuant to the Master Contract by the United States during the first period thereof, then this contract shall be of no [fol. 457] force or effect. If this and the Master Contract become effective but not all of the proposed member units named in sections (i) to (n), both inclusive, of Article 9 hereof execute such contracts with the Agency, then any provision hereof relating to any such proposed member unit not executing such an Agency contract shall be disregarded and shall be given no force or effect and shall not create any right or liability in favor of or against Montecito, the United States, the Agency, any governmental unit, city, district, person, corporation or association whether a party hereto or not.

EXISTING WATER RIGHTS

30. Subject to agreement between the Agency and Montecito:

(a) The water from the Santa Ynez River to be conerved, distributed and used by means of the Cachuma Jnit, other than water obtained by means of tunnels in the Santa Ynez Mountain Range, and to be furnished Montecito under this contract, and to be furnished any member nit by the Agency shall be water which, at the time of the ppropriation thereof by the United States, was or shall e available for appropriation under the laws of the State f California. The established water rights of Santa Barara and Montecito, whether such rights are presently ully developed or not, are hereby recognized by the gency, and shall be preserved notwithstanding the execuion of this contract or of any provision of this contract to fol. 458] the contrary, or any operation or use hereunder.

(b) Santa Barbara and Montecito shall not be required o deliver or transfer to the United States, the Agency, the achuma Unit or to any person or entity entitled to water herefrom any water or water rights to which Santa Barara or Montecito is entitled under their established water ights.

(c) The Agency hereby recognizes and agrees not to ake, restrict, impair or interfere with any or all of said resently established rights to water for present use and ature development based upon such rights.

ONTINGENT UPON APPROPRIATIONS OR ALLOTMENTS OF FUNDS

31. The expenditure of any money or the performance f any work or service by the United States provided for in ie Master Contract which may require appropriations of oney by Congress or the allotment of funds, shall be conngent upon such appropriations or allotments being made. he failure of Congress so to appropriate funds or the failre of an allotment of funds shall not relieve Montecito rom any obligations under this contract and no liability all accrue to the Agency in case such funds are not so ppropriated or alloted: *Provided*, That in the event that ater deliveries are halted or curtailed as a result of such fol. 459] failure to appropriate or allot funds, the obliation of Montecito to make payments pursuant to this ontract shall be reduced to the extent of such halting or urtailment of service.

FAILURE OF UNITED STATES TO PERFORM

32. The Agency shall not be liable for failure to perform any portion of this contract to the extent that such failure is caused by the failure of the United States to perform any obligation imposed on the United States by the Master Contract: *Provided*, That the obligations of Montecito hereunder shall be reduced to the extent that the Agency is prevented from performing as aforesaid: *Provided, further*, That the Agency shall diligently and promptly pursue all rights and remedies available to it to enforce the rights of the Agency and its member units against the United States under the Master Contract relative to such failure to perform.

NOTICES

33. Any notice or announcement which the provisions hereof contemplate shall be given to one of the parties hereto by the other shall be deemed to have been given when deposited in the United States Post Office at Santa Barbara in a postage prepaid registered envelope addressed to the "Santa Barbara County Water Agency, Court House, Santa Barbara, California" if the Agency is being given notice, and to "Montecito County Water District, 583 San Ysidro Road, Montecito, California" if Montecito is being given notice, or such other addresses as [fol. 460] from time to time may be designated by either party in a written notice to the other: *Provided*, however, That this Article shall not preclude the effective service of any such notice or announcement by other means.

ASSIGNMENT

34. The provisions of this agreement shall apply to and bind the successors and assigns of the respective parties and Montecito may assign any or all of its interests herein subject to the provisions of Section 5.6 of the Santa Barbara County Water Agency Act, but no assignment or transfer of this contract or any part thereof or interest therein shall be valid until and unless approved by the Secretary. In the case of such an assignment by Montecito, at the option of

the Agency, Montecito may be required to guarantee payments by the assignee member unit of any obligation owing the Agency in connection with the assigned interest. No sale or other disposal by Montecito for use outside of Montecito or another member unit of any water, or the right to the use thereof, furnished to Montecito pursuant to this contract, shall be valid.

DUTIES OF AGENCY

35. The Agency hereby covenants and agrees to promptly and completely fulfill its obligations under this and the Master Contract and to apply and pay to the United States for credit against obligations of the Agency for Montecito [fol. 461] under the Master Contract, all sums received by the Agency from Montecito hereunder.

ASSURANCES RELATING TO VALIDITY OF CONTRACTS—LITIGATION

36. Promptly after the execution and delivery of this contract the Agency shall file or cause to be filed and prosecute or cause to be prosecuted to a final decree, including any appeal therefrom, an action at law, or in equity or a special proceeding for the judicial examination, approval and confirmation of the proceedings had for the organization of the Agency and the proceedings of the Board of Directors of the Agency and the proceedings of the Agency leading up to and including the making of this contract and the validity of the provisions thereof. Prior to instituting or defending any action in law or equity or any special proceeding, the Agency shall give written notice thereof to Montecito in order that Montecito may take such measures as Montecito deems necessary to protect Montecito's interests, if any, in such action of proceeding.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their names the day and year first hereinabove written.

SANTA BARBARA COUNTY WATER AGENCY

By T. A. TWITCHELL
Chairman, Board of Directors

Attest:

J. E. Lewis (seal)
Clerk of said Agency

Montecito County Water District

By Harry P. Drake
President, Board of Directors

[fol. 462] Attest:

Martha G. Evans
Secretary of said
District

(Seal of Montecito
County Water District)

[fol. 613] In the Superior Court of the State of California in and for the County of Santa Barbara

Answer of Defendants Maurice A. Balaam, Ted R. Holden, William C. Sudden, W. G. Moore, R. E. Sudden, Charles E. Sudden and L. H. Crandall—Filed August 18, 1950

Come now the defendants Maurice A. Balaam, Ted R. Holden, William C. Sudden, W. G. Moore, R. E. Sudden, Charles E. Sudden and L. H. Crandall, and answering plaintiff's complaint on file herein, and the several causes of action therein alleged, admit, deny and allege as follows:

Answer to First Cause of Action

I.

Answering paragraph I of plaintiff's alleged first cause of action, these answering defendants admit that the Senate and Assembly of the Legislature voted in favor of an Act known as "The Santa Barbara County Water

Agency Act", being Chapter 1501 of the Statutes of the 56th Session of the Legislature of the State of California (1945 California Statutes, Chapter 1501, pp. 2780-2801), and a purported Act of the Legislature of the State of California, being Chapter 12 of the Statutes of the State of California of the 1949 Regular Session of the Legisla- [fol. 614] ture of the State of California (1949 California Statutes, Chapter 12, pp. 18 to 27), and that the Governor signed the same, but deny each and every other allegation, matter, inference and thing in said paragraph I contained.

II.

Answering paragraph II of the plaintiff's alleged first cause of action, these answering defendants admit that the two Acts mentioned and referred to were enacted and approved, but deny each and every other allegation, matter, inference and thing in said paragraph II contained.

III.

Answering paragraph III of plaintiff's alleged first cause of action, these answering defendants deny that said Santa Barbara County Water Agency was ever legally constituted or validly created, or that said Agency has ever had a legally constituted or validly created Board of Directors or any officer or officers.

IV.

Answering paragraph V of plaintiff's alleged first cause of action, these answering defendants admit that the negotiations referred to were carried on as alleged, and that a document in the form of Exhibit "A" attached to plaintiff's complaint was signed as indicated by said Exhibit "A", but deny each and every other allegation, matter, inference and thing in said paragraph V contained.

Further answering said paragraph V, these answering [fol. 615] defendants deny that the United States of America or the said Agency ever has had or now has any water to furnish or to sell, as alleged in said paragraph V, or otherwise.

V.

Answering paragraph VI of plaintiff's alleged first cause of action, these answering defendants admit that the purported members of the Board of Directors of said Agency met at the time and place alleged, and voted in favor of said purported Resolution No. 9 in the form of Exhibit "B" attached to plaintiff's complaint herein, but deny each and every other allegation, matter, inference and thing in said paragraph VI contained, and further deny that any valid finding was made for the reason that there was no evidence to support the alleged findings, or any of them, set forth in said Resolution No. 9.

VI.

Answering paragraph VII of plaintiff's alleged first cause of action, these answering defendants admit that the document mentioned and referred to in said paragraph VII was signed, sealed and delivered as alleged, but deny each and every other allegation, matter, inference and thing in said paragraph VII contained.

VII.

Answering paragraph VIII of plaintiff's alleged first cause of action, these answering defendants admit that the document mentioned and referred to in said paragraph VIII [fol. 616] was signed and delivered on the date and by the persons alleged, but deny each and every other allegation, matter, inference and thing in said paragraph VIII contained.

VIII.

Answering paragraph IX of plaintiff's alleged first cause of action, these answering defendants admit that on the date alleged in said paragraph IX, the purported members met and voted in favor of said Resolution No. 7, in the form as attached as Exhibit "C" to plaintiff's complaint herein, but deny each and every other allegation, matter, inference and thing in paragraph IX contained.

IX.

Answering paragraphs XII and XIII of plaintiff's alleged first cause of action, these answering defendants deny that the alleged Master Contract ever has been or is now valid or legal, or that it ever was lawfully authorized or executed.

X.

Answering paragraph XIV of plaintiff's alleged first cause of action, these answering defendants admit that the members of the Board of Directors met at the time and place alleged in said paragraph XIV, and voted in favor of the Resolution containing provisions as alleged in said paragraph XIV, but deny each and every other allegation, matter, inference and thing in said paragraph XIV contained.

[fol. 617] XI.

Answering paragraph XV of plaintiff's alleged first cause of action, these answering defendants admit that the individuals mentioned and referred to in said paragraph XV signed and affixed the Seal referred to, to the documents referred to, on the date alleged in said paragraph XV, but deny each and every other allegation, matter, inference and thing in said paragraph XV contained.

XII.

Answering paragraph XVI of plaintiff's alleged first cause of action, these answering defendants admit that on the date alleged in said paragraph XVI an election was held and the electors voted in favor of the adoption of the Ordinance referred to and alleged, but deny each and every other allegation, matter, inference and thing in said paragraph XVI contained.

XIII.

Answering paragraph XVII of plaintiff's alleged first cause of action, these answering defendants admit that on the date alleged in said paragraph XVII, the officials of said City of Santa Barbara signed and delivered the docu-

ment, of which Exhibit "D" attached to plaintiff's complaint is a copy, but deny each and every other allegation, matter, inference and thing in paragraph XVII contained.

[fol. 618]

XIV.

Answering paragraph XVIII of plaintiff's alleged first cause of action, these answering defendants admit that on the date alleged in said paragraph the electors of said Carpinteria County Water District voted in favor of the Ordinance alleged, but deny each and every other allegation, matter, inference and thing in said paragraph XVIII contained.

XV.

Answering paragraph XIX of plaintiff's alleged first cause of action, these answering defendants admit that the Board of Directors of said Carpinteria County Water District met as alleged, and voted in favor of the Resolution alleged, but deny each and every other allegation, matter, inference and thing in said paragraph XIX contained.

XVI.

Answering paragraph XX of plaintiff's alleged first cause of action, these answering defendants admit that on the date alleged in said paragraph XX the officers of said Carpinteria County Water District signed and dated the documents in the form of Exhibit "E" attached to plaintiff's complaint, but deny each and every other allegation, matter, inference and thing in said paragraph XX ntained.

XVII.

Answering paragraph XXI of plaintiff's alleged first cause of action, these answering defendants admit that on [fol. 619] the date alleged in said paragraph XXI the electors of said Goleta County Water District voted in favor of the Ordinance alleged in said paragraph XXI, but deny each and every other allegation, matter, inference and thing in said paragraph XXI contained.

XVIII.

Answering paragraph XXII of plaintiff's alleged first cause of action, these answering defendants admit that the Board of Directors of Goleta County Water District met as alleged in said paragraph XXII and voted in favor of the Resolution also alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in said paragraph XXII contained.

XIX.

Answering paragraph XXIII of plaintiff's alleged first cause of action, these answering defendants admit that on the date alleged in said paragraph XXIII the officers of said Goleta County Water District signed and dated the document in the form of Exhibit "F" attached to plaintiff's complaint, but deny each and every other allegation, matter, inference and thing in said paragraph XXIII contained.

XX.

Answering paragraph XXIV of plaintiff's alleged first cause of action, these answering defendants admit that on the date alleged in said paragraph XXIV the electors of Montecito County Water District voted in favor of the [fol. 620] Ordinance alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in said paragraph XXIV contained.

XXI.

Answering paragraph XXV of plaintiff's alleged first cause of action, these answering defendants admit that the Board of Directors of the Montecito County Water District met as alleged and voted in favor of the Resolution alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in said paragraph XXV contained.

XXII.

Answering paragraph XXVI of plaintiff's alleged first (sic) of action, these answering defendants admit that on

the date alleged in said paragraph XXVI the officers of Montecito County Water District signed and dated the document in the form of Exhibit "G" attached to plaintiff's complaint, but deny each and every other allegation, matter, inference and thing in said paragraph XXVI contained.

XXIII.

Answering paragraph XXVII of plaintiff's alleged first cause of action, these answering defendants admit that on the date alleged in said paragraph XXVII the electors of Summerland County Water District voted in favor of the Ordinance alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in [fol. 621] said paragraph XXVII contained.

XXIV.

Answering paragraph XXVIII of plaintiff's alleged first cause of action, these answering defendants admit that the Board of Directors of the Summerland County Water District met as alleged in said paragraph and voted in favor of the Resolution alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in said paragraph XXVIII contained.

XXV.

Answering paragraph XXIX of plaintiff's alleged first cause of action, these answering defendants admit that on the date alleged in said paragraph XXIX, the officers of Summerland County Water District signed and dated the document in the form of Exhibit "H" attached to plaintiff's complaint, but deny each and every other allegation, matter, inference and thing in said paragraph XXIX contained.

XXVI.

Answering paragraphs XXXI, XXXII and XXXIII of plaintiff's alleged first cause of action, these answering defendants admit that the documents signed by the City of Santa Barbara and the said four county water districts are in the forms shown by Exhibits "D" to "H" inclusive,

attached to plaintiff's complaint herein, but deny each and every other allegation, matter, inference and thing in said paragraphs XXXI, XXXII and XXXIII contained.

[fol. 622]

XXVII.

Answering paragraph XXXIV of plaintiff's alleged first cause of action, these answering defendants deny each and every allegation, matter, inference and thing in said paragraph XXXIV contained.

XXVIII.

Answering paragraph XXXV of plaintiff's alleged first cause of action, these answering defendants admit that on the date alleged in said paragraph XXXV the members of the purported Board of Directors of said alleged Santa Barbara County Water Agency voted in favor of said Resolution No. 13 referred to in said paragraph XXXV, but deny each and every other allegation, matter, inference and thing in said paragraph XXXV contained.

Answer to Second Cause of Action

I.

Answering paragraph I of plaintiff's alleged second cause of action, these answering defendants hereby refer to their answer to plaintiff's alleged first cause of action herein, and by such reference incorporate their said answer herein as a portion of their answer to plaintiff's alleged second cause of action the same as though said answer were specifically set forth in full at this point.

[fol. 623]

II.

Answering paragraph VI of plaintiff's alleged second cause of action, these answering defendants admit that the Board of Directors of said Carpinteria County Water District met as alleged in said paragraph, and that the members of said Board voted in favor of the Ordinance No. 1 referred to in said paragraph and purporting to call an election for the purpose alleged in said paragraph, but defendants deny each and every other allegation, matter, inference and thing in said paragraph VI contained.

III.

Answering paragraph IX of plaintiff's alleged second cause of action, these answering defendants admit that the Board of Directors of said Carpinteria County Water District met as alleged in said paragraph and canvassed the returns of the election and declared the result of the election and the votes case (sic) in favor and against the proposition in the numbers as alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in said paragraph IX contained.

ANSWER TO THIRD CAUSE OF ACTION

I.

Answering paragraph I of plaintiff's alleged third cause of action, these answering defendants refer to their an- [fol. 624] swer to plaintiff's alleged first cause of action, and by such reference incorporate and adopt the same at this point as a part of their answer to plaintiff's alleged third cause of action.

II.

Answering paragraph VI of plaintiff's alleged third cause of action, these answering defendants admit that the Board of Directors of said Goleta County Water District met as alleged in said paragraph, and that the members of said Board voted in favor of the Ordinance No. 1 referred to in said paragraph and purporting to call an election for the purpose alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in said paragraph VI. contained.

III.

Answering paragraph IX of plaintiff's alleged third cause of action, these answering defendants admit that the Board of Directors of said Goleta County Water District met as alleged in said paragraph and canvassed the returns of the election and declared the result of the election and the votes cast in favor of and against the proposition in the numbers as alleged in said paragraph, but deny each

and every other allegation, matter, inference and thing in said paragraph IX contained.

[fol. 625] ANSWER TO FOURTH CAUSE OF ACTION

I.

Answering paragraph I of plaintiff's alleged fourth cause of action, these answering defendants hereby refer to their answer to plaintiff's alleged first cause of action, and by such reference incorporate and adopt said answer at this point as a portion of their answer to plaintiff's alleged fourth cause of action.

II.

Answering paragraph VI of plaintiff's alleged fourth cause of action, these answering defendants admit that the Board of Directors of said Montecito County Water District met as alleged in said paragraph, and that the members of the said Board voted in favor of the Ordinance No. 26 referred to in said paragraph, and purporting to call an election for the purpose alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in said paragraph VI contained.

III.

Answering paragraph IX of plaintiff's alleged fourth cause of action, these answering defendants admit that the Board of Directors of said Goleta County Water District met as alleged in said paragraph and canvassed the returns of the election and declared the result of the election and the votes cast in favor of and against the proposition in the numbers as alleged in said paragraph, but deny each [fol. 626] and every other allegation, matter, inference and thing in said paragraph IX contained.

ANSWER TO FIFTH CAUSE OF ACTION

I.

Answering paragraph I of plaintiff's alleged fifth cause of action, these answering defendants hereby refer to their

answer to plaintiff's alleged first cause of action herein, and by such reference adopt the same as a part of their answer to plaintiff's alleged fifth cause of action, the same as though specifically set forth at this point.

II.

Answering paragraph VI of plaintiff's alleged fifth cause of action, these answering defendants admit that the Board of Directors of said Summerland County Water District met as alleged in said paragraph, and that the members of the said Board voted in favor of the Ordinance No. 1 referred to in said paragraph, and purporting to call an election for the purpose alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in said paragraph VI contained.

III.

Answering paragraph IX of plaintiff's alleged fifth cause of action, these answering defendants admit that the Board of Directors of said Summerland County Water [fol. 627] District met as alleged in said paragraph, and canvassed the returns of the election and declared the result of the election, and the votes cast in favor of and against the proposition in the numbers as alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in said paragraph IX contained.

ANSWER TO SIXTH CAUSE OF ACTION

I.

Answering paragraph I of plaintiff's alleged sixth cause of action, these answering defendants refer to plaintiff's alleged first cause of action and by such reference incorporate and adopt the same at this point as a portion of their answer to plaintiff's sixth cause of action.

II.

Answering paragraph VI of plaintiff's alleged sixth cause of action, these answering defendants admit that the City Council of said City of Santa Barbara met as alleged in

said paragraph, and that the members of the said City Council voted in favor of the Ordinance No. 2253 referred to in said paragraph, and purporting to call an election for the purpose alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in said paragraph VI contained.

[fol. 628] III.

Answering paragraph IX of plaintiff's alleged sixth cause of action, these answering defendants admit that the City Council of said City of Santa Barbara met as alleged in said paragraph, and canvassed the returns of the election and declared the result of the election and the votes cast in favor of and against the proposition in the numbers as alleged in said paragraph, but deny each and every other allegation, matter, inference and thing in said paragraph contained.

As a Further, First, Separate and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged, These Answering Defendants Aver as Follows:

I

The purported "Master Contract" referred to in the complaint states, in Article 30 thereof, that:

"Subject to agreement or the power of the United States of eminent domain:

(a) the water from the Santa Ynez River to be conserved, distributed, and used by means of the Cachuma [fol. 629] Unit, other than water obtained by means of tunnels in the Santa Ynez Mountain Range, shall be water which, at the time of the appropriation thereof by the United States, was or shall be available for appropriation under the Laws of the State of California."

II

Plaintiff has not appropriated or obtained any permit to appropriate water from the Santa Ynez River, and has

no right whatever to divert or take water from the Santa Ynez River, and particularly has no right to take water from said river for use on lands within the boundaries of any "member unit" of the Agency, or elsewhere.

III

Defendants are informed and believe and therefore allege that plaintiff or the United States has not acquired any water by agreement with any holder of water rights, and has not acquired any water rights by agreement under which water may be diverted from land in the Santa Ynez River Valley to which it is appurtenant, and has not acquired any water rights which are not appurtenant to land in the Santa Ynez River Valley.

IV

Defendants are informed and believe and therefore allege that there is no water of the Santa Ynez River which [fol. 630] is not required to satisfy and supply the rights and needs of the owners of lands which are riparian to the said river, the rights and needs of owners of land for which water rights have been acquired by appropriation or prescription, the rights and needs of the owners of lands overlying percolating waters which depend upon the flow of the Santa Ynez River for replenishment and supply, and the rights and needs of the owners of land for which water from such percolating waters have been acquired by appropriation or prescription. Further on such ground defendants allege that if there is any right to salvage excess waters of flash floods, or other floods, the right belongs to and should be exercised solely for the benefit of land owners holding riparian water rights and owners of land overlying percolating waters fed by and dependent upon the Santa Ynez River.

V

Any interruption in the flow of the Santa Ynez River will cut down and substantially decrease the amount of water obtainable for owners of lands and owners of said

overlying percolating waters fed by and dependent upon the waters of the said stream.

As a Further, Second, Separate and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged, These Answering Defendants Aver as Follows:

[fol. 631]

I

"The Santa Barbara County Water Agency Act" referred to in the complaint provides that boundaries and territory of the said district are all the territory within the County of Santa Barbara. It provides that the said Agency shall have power to construct or acquire and to operate local improvements to control, conserve and make use of storm waters, except that it shall not have power to construct, acquire or operate works for the control of flood waters except for the purpose of making available water for beneficial use of land or inhabitants in the Agency. It provides that the Agency shall have power to levy taxes for the purpose of paying any obligation of the Agency and to accomplish the purposes of the Agency, to create bonded indebtedness for the payment of the cost of acquisition or construction of any works for any purposes of the Agency, and to levy a tax or assessment each year on all the taxable property in the Agency to pay the principal and interest of such bonds, and to levy special assessments against property in the Agency to pay any obligation of the Agency or to accomplish any purpose of the Agency.

II

In adopting the said statute, the Legislature made express findings in Section 17 thereof, but did not make any finding or determination that the lands of defendants, or all lands within the boundaries of the district or Agency, [fol. 632] will be benefited by works or operations of the Agency, and did not adopt or approve or make any findings on any plan of improvement or development to be constructed or operated at any cost or expense of the

Agency which would benefit the lands of defendants or any lands in the eastern or northern portion of the district or Agency.

In geography the land within the boundaries of the district lies generally within separate geographical areas and watersheds, roughly as follows:

The upper Santa Ynez River water-shed lying roughly above the confluence of La Zaca Creek and Nojoqui Creek: the lower Santa Ynez River water-shed; San Antonio Creek water-shed; Sisquoc River water-shed; Cuyama River-Santa Maria River Water-shed which lies partly in Santa Barbara County and partly in San Luis Obispo County; the coastal plain from Carpinteria to Gaviota; the coastal area in the vicinity of Point Concepcion and Point Arguello; the upper Cuyama Valley, including extensive oil fields therein, lying partly within Santa Barbara County and partly within San Luis Obispo County.

III

The said statute was planned and enacted primarily, if not entirely, to provide an organization with which the Secretary of Interior might contract in pursuance generally under the Act of Congress of June 17, 1902 (32 Stat. 388), and Acts Amendatory thereof or supplemental thereto, [fol. 633] collectively referred to as "the Federal reclamation laws"; for the payment of construction costs of the Cachuma Project for the salvaging of storm waters in the upper Santa Ynez River and the utilization of such waters in the communities and on the lands in the coastal plain, such as Carpinteria, Summerland, Montecito, Santa Barbara and Goleta areas, and for the transportation of water to such areas and the development of water in the tunnel known as Tecolote Tunnel.

The said project, or projects, or any project contemplated or possible under the provisions of the said Act, would confer no benefit whatever on the lands of defendants, or any of them, or on any lands outside of the said plains from Carpinteria to Goleta. A finding or determination that the lands of defendants, or any of them, or lands outside the said coastal plain area would be benefited by said

project, or any project contemplated or possible under the said statute, would be contrary to any rational view of the facts since the lands outside of said coastal plain area plainly could not by any fair or proper view of the facts be beneficial. The said Act in Section 10.1 thereof provides for a limit of taxation for purposes exclusive of payments on bonded indebtedness and contractual liabilities authorized by vote of the electors, and exclusive of indebtedness payable by special assessment, and in Section 9.1 thereof provides for a limitation on the amount of [fol. 634] bonded indebtedness. The said Act in Section 10.2 thereof provides for contributions to member units, and the Agency in its purported contracts with member units alleged in the complaint has purported to exercise such right, and to contribute for a period of forty years a substantial part of the amount which can be raised by taxation authorized by said Section 10.1. The amount of money available within the debt limit provided for by the Statute is not sufficient to provide for the construction of any improvements or facilities which could effectively develop or conserve water for, or otherwise benefit, any lands outside the limits of the member units referred to in the complaint.

IV

The said Santa Barbara County Water Agency Act is unconstitutional in that it is in violation of the 14th Amendment to the Constitution of the United States of America.

As a Further, Third, Separate and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged, These Answering Defendants Aver as Follows:

I

The purported "Master Contract" referred to in the complaint provides in Article 20(b) thereof that the Agency [fol. 635] shall use all powers and resources available to it under The Santa Barbara County Water Agency Act, including the taxing power of the Agency or the power to levy special assessments, to collect and pay to the United

States all amounts which the Agency by the provisions of the said contract shall be obligated to pay to the United States.

II

The said purported contract in Article 13(b) thereof provides that the Agency shall pay the United States for all water furnished under the contract to member units at the water rates provided for in said purported contract. Said purported contract does not require that the Agency shall charge or collect from the member units at such or any particular water rates, and the Agency in its contracts with the member units alleged in the complaint has agreed to charge and collect from member units for water furnished under said contracts at rates less than those provided for in the purported "Master Contract", and apparently assumes the right to determine what part of the water rates prescribed by the "Master Contract" shall be paid by water rates charged to and collected from member units and what part thereof shall be paid from revenues obtained by taxation under the powers provided for in Section 10.1 of the Agency Act.

III

The said project provided for by the purported "Master [fol. 636] Contract" or anything done under said contract, would confer no benefits whatever on the lands of these answering defendants, or any of them, or on any lands outside of the coastal plain from Carpinteria north through Goleta. That the defendants' lands are not, nor is any thereof, located, in whole or in part, within the boundaries of any one or more of the member units mentioned in plaintiff's complaint.

IV

That if the legislature of the State of California by implication has made a finding that all of the property within the boundaries of the Agency as defined in said Agency Act will be uniformly or otherwise benefited by the construction or acquisition of works authorized and

contemplated by the said Act or the said "Master Contract" or by the maintenance or operation of said works, such a finding is purely fictitious and palpably arbitrary and contrary to any rational view of the facts and not based on any real or actual evidence or investigation or upon any comprehensive or other plan of improvement.

For a Further, Fourth, Separate and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged, These Answering Defendants Aver as Follows:

[fol. 637] I

The purported contracts between the Agency and the member units referred to in the complaint, and attached as Exhibits "D" to "H", inclusive to the complaint herein, provide in Article 13 that the Agency will contribute to the member units each year toward the payment of the water rates for water furnished to member units, the aggregate amount of $100,000.00, or an amount which can be financed by the total Agency funds available for the purpose, plus funds raised by a tax levy, not exceeding 10¢ on each $100.00 of assessed valuation of all taxable property in the Agency. The said Article provides, in effect, that the Agency will levy taxes against all taxable property within the boundaries of the Agency for the purpose of raising money to make such contribution.

II

The said Cachuma project for the furnishing of water therefrom to member units of the Agency would confer no benefits whatever on the lands of the answering defendants, or any of them, or on any lands within the boundaries of the Agency outside the boundaries of the said member units.

The said contribution provided for in the said contracts between the Agency, its member units, and the taxation of the property of the answering defendants, and of the owners of lands outside the boundaries of the member units, is in violation of Section 31 of Article IV and Section 12 [fol. 638] of Article XI of the California Constitution; and

Section 10.2 of the Agency Act, which appears to authorize such contributions, is in violation of the 14th Amendment of the Constitution of the United States.

As a Fifth, Separate and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged, These Answering Defendants Aver as Follows:

I

Article 13(c) and Article 18 of the purported "Master Contract" provide that the Agency will collect from each member unit for the water each member unit is required to take under the contracts alleged in the complaint, and provides that the Agency will exercise the powers granted by Section 10.3 of the Agency Act to levy and collect taxes on all taxable property of any delinquent member unit required to pay for the water which the said contracts require that the member unit shall take.

Articles 13(a), 13(f), 18 and 20 of each of the member unit contracts, Exhibits "D" through "H" of the complaint, provide that each member unit will pay for all water which is allocated to it under the purported "Master Contract", whether it takes it, or wants it, or not, and that it will exercise all its powers under the County Water District [fol. 639] Act to collect the amount payable to the Agency and will cause to be levied and collected all necessary taxes and assessments.

Article 18 of each member unit contract provides that each member unit will pay the Agency the water charges under the contract, notwithstanding any default of individual water users, and provides that the obligations of each member unit arising out of or pursuant, or incidental to the purported "Master Contract" shall constitute general obligations of the member units. The California Water Code, particularly in Section 31791 thereof provides that general obligations are payable by a general tax.

II

Said contracts with member units, Exhibits "D" through "H" of the complaint, provide that the Agency will con-

tribute to member units for the payment of water charges in the aggregate amount of $100,000.00 per year, or an amount which may be raised with a tax levy at the rate of 10¢ per $100.00 of assessed valuation of all property within the boundaries of the Agency. The purported "Master Contract" in each of the said member unit contracts, requires that the Agency and each member unit shall maintain an organization for its administration, and shall raise the funds necessary for such purpose by taxation of all taxable property within their respective limits.

[fol. 640] III

Articles 25 to 29 of the purported "Master Contract", and Articles 25 to 29 of each of the member unit contracts provide that no water furnished under the said contracts shall be made available for any parcel of land in excess of 160 acres held in private ownership of a single individual unless the owner thereof shall have executed a contract agreeing to sell all land in excess of 160 acres at valuations fixed as provided for in said contracts.

IV

There exists within the boundaries of the said county water districts referred to in the complaint parcels of land in private ownership of a single individual, containing more than 160 acres of irrigable land. The owners of said parcels are denied the right to receive water on the terms and conditions available to owners of tracts containing 160 acres or less, and are subjected to liability for taxes without receiving any of the benefits for which the taxes are levyable.

As a Further, Sixth, Separate and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged, These Answering Defendants Aver as Follows:

[fol. 641] I

There are included within the boundaries of each county water district referred to in the complaint parcels of land which are not substantially or directly benefited by being

in the district, or by the availability of water as proposed by the purported "Master Contract" and the member unit contracts.

II

The Water Code of California, particularly in Part 8 of Division 12 thereof provides procedures by which the Board of Directors of a district may exclude from the district tracts of land not substantially or directly benefited by being in the district, and procedures by which districts may be consolidated and by which districts may be dissolved.

III

The purported "Master Contract" in Article 24 thereof, and each member unit contract, Exhibits "D" through "H" of the complaint, in Article 24 thereof, provide that, while the purported "Master Contract" between the Agency and the United States is in effect, with respect to a member unit, no change will be made in the member unit, either by inclusion or exclusion of land, by partial or total consolidation or merger with any political subdivision of the State, by proceedings to dissolve or otherwise, except upon the written assent of the United States, through the [fol. 642] contracting officer provided for in the said contracts. The Water Code in Section 23202 thereof purports to provide, in effect, that land which is not substantially or directly benefited by being included in a county water district, shall not be excluded unless the Secretary of the Interior agrees to it.

IV

The said provisions of the said contracts and said provision of the Water Code violate the 14th Amendment of the Constitution of the United States and constitute an unlawful delegation of legislative and local power in violation of Section 1 of Article IV of the California Constitution.

As a Further, Seventh, Separate, and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged, These Answering Defendants Aver as Follows:

I

Section 10.3 of the said Agency Act provides as follows:

"The Agency shall have the power to levy a special ad valorem tax on all the taxable property in any member unit, whenever any such member unit is delinquent in any payment due the Agency by such [fol. 643] member unit under any contract entered into by them. Such tax shall be levied only at a rate sufficient to raise an amount equal to the amount delinquent."

II

The purported "Master Contract" provides in Article 18 and 20(b) thereof that the Agency agrees to use all of the powers and resources available to it under the said Agency Act to collect the taxes necessary for it to meet its obligations to the United States under the contract.

III

The said provisions of the Agency Act and of the said purported "Master Contract" are in violation of Section 12 of Article XI of the Constitution of the State of California.

For a Further, Eighth, Separate, and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged, These Answering Defendants Aver as Follows:

I

It is provided in Subdivision (c) (2) of Section 9 of the Reclamation Project Act of 1939, referred to in said "Master Contract", alleged in plaintiff's complaint, that the Secretary of Interior is authorized to enter into con- [fol. 644] tracts to furnish water "for municipal water

supply purposes or miscellaneous purposes", provided that any such contract:

> "* * * (2) shall be for such periods, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, and shall require the payment of said rates each year in advance of delivery of water for said year."

II

That Section 9(e) of said Reclamation Project Act of 1939 mentioned in Article 7 of said "Master Contract" is in the words and figures following:

> "In lieu of entering into a repayment contract pursuant to the provisions of subsection (d) of this section to cover that part of the cost of the construction of works connected with water supply and allocated to irrigation, the Secretary, in his discretion, may enter into either short or long-term contracts to furnish water for irrigation purposes. Each such contract [fol. 645] shall be for such period, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, due consideration being given to that part of the cost of construction of works connected with water supply and allocated to irrigation, and shall require payment of said rates each year in advance of delivery of water for said year. In the event such contracts are made for furnishing water for irrigation purposes, the costs of any irrigation water distribution works constructed by the United States in connection with the new project, new division of a project, or supplemental works on a project, shall be covered by a repayment contract entered into pursuant to said subsection (d)."

III

That the provisions contained in said Sections 9 (c)(2) and 9 (e) stating that each such contract shall be at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the [fol. 646] annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, constitutes an unconstitutional delegation of powers to the Secretary of the United States Department of Interior, for the reason that the said statute (a) furnishes no guide for the fixing of such rates or shares, (b) establishes no limitation as to such rates or shares, and (c) by its terms vests in the Secretary of Interior an unlimited, arbitrary and uncontrolled discretion, subject to whim and caprice, and subject to variation as to such rates and charges, as the personnel of the office of Secretary of the Interior may change from time to time, all in violation of Section 1 of Article I of the Constitution of the United States of America, and the said "Master Contract" lacks mutuality.

Wherefore, defendants pray judgment that plaintiff take nothing by its action herein; that defendants have judgment declaring their rights, obligations and duties with respect to and under the Santa Barbara County Water Agency Act and the purported "Master Contract" and purported member unit contracts referred to in plaintiff's complaint herein; that the above entitled Court determine and declare that said Agency Act and each and all of said contracts are invalid in so far as they apply to the defendant's lands and taxable property, and lands and taxable property outside of the boundaries of the said member [fol. 647] units; that the plaintiff, its agents and servants, be enjoined from proceeding under said contracts, or any of them, and from constructing, acquiring, operating or maintaining or participating in the construction, acquisition, operation or maintenance of said Cachuma Project, and from levying any tax or assessment or creating any obligation against the lands or taxable property of the defendants, or any of them, or the lands and taxable property outside the boundaries of the member units; for

defendants' costs herein laid out and expended, and such other and further relief as to the Court may seem just, equitable or proper.

Sherman Anderson, Alex W. Davis and W. P. Butcher, By s/ Sherman Anderson, Attorneys for Defendants.

[File endorsement omitted]

[fol. 648] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA BARBARA

AMENDMENT TO ANSWER OF DEFENDANTS MAURICE A. BALAAM, TED R. HOLDEN, WILLIAM C. SUDDEN, W. G. MOORE, R. E. SUDDEN, CHARLES E. SUDDEN and L. H. CRANDALL

—Filed December 7, 1950

Defendants Maurice A. Balaam, Ted R. Holden, William C. Sudden, W. G. Moore, R. E. Sudden, Charles E. Sudden and L. H. Crandall, with leave of court heretofore given, amend their answer to the complaint herein in the particulars herein set forth, and admit, deny and allege as follows:

Second Cause of Action

IV.

Answering the allegations of Paragraph VIII of the Second Cause of Action, defendants deny that the special election therein referred to was noticed or carried on or conducted in the manner required by Sections 31153, 23223 and 23224 of the Water Code of California.

Third Cause of Action

IV.

Answering the allegations of Paragraph VIII of the Third Cause of Action, defendants deny that the special election therein referred to was noticed or carried on or conducted in the manner required by Sections 31153, 23223 [fol. 649] and 23224 of the Water Code of California.

Fourth Cause of Action

IV.

Answering the allegations of Paragraph VIII of the Fourth Cause of Action, defendants deny that the special election therein referred to was noticed or carried on or conducted in the manner required by Sections 31153, 23223 and 23224 of the Water Code of California.

Fifth Cause of Action

IV.

Answering the allegations of Paragraph VIII of the Fifth Cause of Action, defendants deny that the special election therein referred to was noticed or carried on or conducted in the manner required by Sections 31153, 23223 and 23224 of the Water Code of California.

The Further First, Separate and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged Is Amended to Read as Follows:

I

The purported "Master Contract" referred to in the complaint states, in Article 30 thereof, that:

"Subject to agreement or the power of the United States of eminent domain:

[fol. 650] (a) the water from the Santa Ynez River to be conserved, distributed, and used by means of the Cachuma Unit, other than water obtained by means of tunnels in the Santa Ynez Mountain Range, shall be water which, at the time of the appropriation thereof by the United States, was or shall be available for appropriation under the Laws of the State of California".

II.

Plaintiff or the United States or the Bureau of Reclamation has not appropriated or obtained any permit to appropriate water from the Santa Ynez River, and has no right

whatever to divert or take water from the Santa Ynez River, and particularly has no right to take water from said river for use on lands within the boundaries of any "member unit" of the Agency, or elsewhere. The City of Santa Barbara or any of the County Water Districts referred to in the complaint has not appropriated or obtained any permit to appropriate water from the Santa Ynez River and has no right whatever to divert or take water from the Santa Ynez River, and particularly has no right to take water from said river for use on lands within the boundaries of the City or within the boundaries of any of the said County Water Districts, except that the City of Santa Barbara and Montecito County Water District have certain water rights under which water has been and is [fol. 651] being taken at diversion points upstream from the Cachuma reservoir site in limited quantities which have been fully developed and are being fully utilized by said City and Water District respectively. No water has been appropriated and no water right has been acquired for the use or benefit of any land or use within the City of Santa Barbara or any of the said County Water Districts except such as may have been acquired by virtue of the water rights of the City of Santa Barbara and Montecito County Water District above referred to.

III.

Defendants are informed and believe and therefore allege that with the exceptions noted in paragraph II above, the plaintiff or the United States or the City of Santa Barbara or any of the County Water Districts referred to in the complaint or any land or water user within the City or any of said County Water Districts has not acquired any water by agreement with any holder of water rights, and has not acquired any water rights by agreement under which water may be diverted from land in the Santa Ynez River Valley to which it is appurtenant, and has not acquired any water rights which are not appurtenant to land in the Santa Ynez River Valley.

IV.

Defendants are informed and believe and therefore allege that there is no water of the Santa Ynez River which is not required to satisfy and supply the rights and needs of the [fol. 652] owners of lands which are riparian to the said river, the rights and needs of owners of land for which water rights have been acquired by appropriation or prescription, the rights and needs of the owners of lands overlying percolating waters which depend upon the flow of the Santa Ynez River for replenishment and supply, and the rights and needs of the owners of land for which water from such percolating waters have been acquired by appropriation or prescription. Further on such ground defendants allege that if there is any right to salvage excess waters of flash floods, or other floods, the right belongs to and should be exercised solely for the benefit of land owners holding riparian water rights and owners of land overlying percolating waters fed by and dependent upon the Santa Ynez River.

V.

Any interruption in the flow of the Santa Ynez River will cut down and substantially decrease the amount of water obtainable for owners of lands and owners of said overlying percolating waters fed by and dependent upon the waters of the said stream.

As a Further Ninth Separate and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged, These Answering Defendants Allege as Follows:

[fol. 653] I.

The master contract referred to in the complaint is proposed by the United States by the Bureau of Reclamation, and recites that it is made, in pursuance of the reclamation laws of the United States. The said reclamation laws provide that the right to the use of waters acquired under the provisions of the reclamation laws shall be appurtenant to the land irrigated.

II.

The said master contract provides in Paragraph 11 and other paragraphs thereof that the United States shall furnish water to Member Units of the Agency and provides in Section 14 that the United States reserves the right to all waste, seepage and return flow water derived from water so furnished which escapes or discharges beyond the boundaries of the Agency.

Each of the contracts between the Agency and the Member Units referred to in the complaint provides that the water for Member Units and Water Users therein shall be "furnished" pursuant to the provisions of the said master contract and also provides that all waste, seepage and return flow water derived from water so furnished which escapes or discharges beyond the boundaries of the Agency is reserved to the United States.

The said provisions of the master contract are invalid and void and beyond the powers granted by Congress to the [fol. 654] Secretary of Interior as the contracting agent of the United States under the reclamation laws. The said contracts of the Agency and of said Member Units are invalid and void under California law.

Wherefore, defendants pray for judgment and relief as prayed for in their original answer herein,

Sherman Anderson, Alex W. Davis and W. P. Butcher, by s/ Sherman Anderson, Attorneys for Defendants.

[fol. 662] In the Superior Court of the State of California in and for the County of Santa Barbara

Amendment to Answer of Defendants Maurice A. Balaam, Ted R. Holden, William C. Sudden, W. G. Moore, R. E. Sudden, Charles E. Sudden and L. H. Crandall—Filed January 3, 1951

Defendants Maurice A. Balaam, Ted R. Holden, William C. Sudden, W. G. Moore, R. E. Sudden, Charles E. Sudden

and L. H. Crandall, with leave of court heretofore given, amend their answer to the complaint herein in the particulars herein set forth, and admit, deny and allege as follows:

Second Cause of Action

IV.

Answering the allegations of Paragraph VIII of the Second Cause of Action, defendants deny that the special election therein referred to was noticed or carried on or conducted in the manner required by Sections 31153, 23223 and 23224 of the Water Code of California.

Third Cause of Action

IV.

Answering the allegations of Paragraph VIII of the Third Cause of Action, defendants deny that the special election therein referred to was noticed or carried on or conducted in the manner required by Sections 31153, 23223 [fol. 663] and 23224 of the Water Code of California.

Fourth Cause of Action

IV.

Answering the allegations of Paragraph VIII of the Fourth Cause of Action, defendants deny that the special election therein referred to was noticed or carried on or conducted in the manner required by Sections 31153, 23223 and 23224 of the Water Code of California.

Fifth Cause of Action

IV.

Answering the allegations of Paragraph VIII of the Fifth Cause of Action, defendants deny that the special election therein referred to was noticed or carried on or conducted in the manner required by Sections 31153, 23223 and 23224 of the Water Code of California.

The Further First, Separate and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged Is Amended to Read as Follows:

I

The Master Contract between the United States and The Santa Barbara County Water Agency provides that it is made in consideration of the mutual covenants therein contained. The said contract provides that the United [fol. 664] States, to the extent that water is available therefor, will furnish water to Member Units and that no liability shall accrue against the United States on account of water not being available for furnishing or delivery under the said contract.

The purported "Master Contract" referred to in the complaint states, in Article 30 thereof, that:

> "Subject to agreement or the power of the United States of eminent domain:
>
> (a) the water from the Santa Ynez River to be conserved, distributed, and used by means of the Cachuma Unit, other than water obtained by means of tunnels in the Santa Ynez Mountain Range, shall be water which, at the time of the appropriation thereof by the United States, was or shall be available for appropriation under the Laws of the State of California."

Each of the contracts referred to in the complaint between The Santa Barbara County Water Agency and the so-called Member Units provides that it is made in consideration of the mutual covenants therein contained and contains the provisions above referred to in this Paragraph I.

II

Plaintiff or the United States or the Bureau of Reclamation has not appropriated or obtained any permit to appropriate water from the Santa Ynez River, and has no [fol. 665] right whatever to divert or take water from the Santa Ynez River, and particularly has no right to take water from said river for use on lands within the bound-

aries of any "member unit" of the Agency, or elsewhere. The City of Santa Barbara or any of the County Water Districts referred to in the complaint has not appropriated or obtained any permit to appropriate water from the Santa Ynez River and has no right whatever to divert or take water from the Santa Ynez River, and particularly has no right to take water from said river for use on lands within the boundaries of the City or within the boundaries of any of the said County Water Districts, except that the City of Santa Barbara and Montecito County Water District have certain water rights under which water has been and is being taken at diversion points upstream from the Cachuma reservoir site in limited quantities which have been fully developed and are being fully utilized by said City and Water District respectively. No water has been appropriated and no water right has been acquired for the use or benefit of any land or use within the City of Santa Barbara or any of the said County Water Districts except such as may have been acquired by virtue of the water rights of the City of Santa Barbara and Montecito County Water District above referred to.

III

Defendants are informed and believe and therefore allege that with the exceptions noted in Paragraph II above, [fol. 666] the plaintiff or the United States or the City of Santa Barbara or any of the County Water Districts referred to in the complaint or any land or water user within the City or any of said County Water Districts has not acquired any water by agreement with any holder of water rights, and has not acquired any water rights by agreement under which water may be diverted from land in the Santa Ynez River Valley to which it is appurtenant, and has not acquired any water rights which are not appurtenant to land in the Santa Ynez River Valley.

IV

Defendants are informed and believe and therefore allege that there is no water of the Santa Ynez River which is not required to satisfy and supply the rights and needs

of the owners of lands which are riparian to the said river, the rights and needs of owners of land for which water rights have been acquired by appropriation or prescription, the rights and needs of the owners of land overlying percolating waters which depend upon the flow of the Santa Ynez River for replenishment and supply, and the rights and needs of the owners of land for which water from such percolating waters have been acquired by appropriation or prescription. Further on such ground defendants allege that if there is any right to salvage excess waters of flash floods, or other floods, the right belongs to and should be exercised solely for the benefit of land owners holding [fol. 667] riparian water rights and owners of land overlying percolating waters fed by and dependent upon the Santa Ynez River.

V

Any interruption in the flow of the Santa Ynez River will cut down and substantially decrease the amount of water obtainable for owners of lands and owners of said overlying percolating waters fed by and dependent upon the waters of the said stream.

VI

The covenants of the said contract between the United States and The Santa Barbara County Water Agency to be performed on the part of the United States with respect to the furnishing of water are impossible of performance and the contract provides that no remedy shall exist for the failure of the United States to perform such covenants or any thereof. All other covenants of the said contract are dependent on and purely incidental to the said covenants for the furnishing of water. There is no consideration for the covenants of The Santa Barbara County Water Agency in the said contract and the said contract is void.

Plaintiff alleges that the contract is valid and prays for an adjudication of such validity. The existence or extent of surplus water available for appropriation by the United States cannot be adjudged in this action and proceedings are pending under Division 2 Part 2 of the Cali-

[fol. 668] fornia Water Code for the determination of the matters alleged in Paragraphs II, III, IV and V of this defense, and for the determination of the right of the United States to appropriate water from the Santa Ynez River.

VII

The covenants of each of the contracts between The Santa Barbara County Water Agency and the respective Member Units to be performed on the part of said Agency with respect to the furnishing of water are impossible of performance and the contracts provide that no remedy shall exist for the failure of the said Agency to perform such covenants or any thereof. All other covenants of the said contracts are dependent on and purely incidental to the said covenants for the furnishing of water. There is no consideration for the covenants of the respective Member Units in the said contracts and the said contracts are void. Plaintiff alleges that each of the said contracts is valid and prays for an adjudication of such validity. The existence or extent of surplus water available for appropriation by the United States cannot be adjudged in this action, and proceedings are pending under Division 2 Part 2 of the California Water Code for the determination of the matters alleged in Paragraphs II, III, IV and V of this defense, and for the determination of the right of the United States to appropriate water from the Santa Ynez River.

[fol. 669] *As a Further Ninth, Separate and Distinct Affirmative Defense to Plaintiff's Complaint and Each of the Several Causes of Action Therein Alleged, These Answering Defendants Allege as Follows:*

I

The master contract referred to in the complaint is proposed by the United States by the Bureau of Reclamation, and recites that it is made, in pursuance of the reclamation laws of the United States. The said reclamation laws provide that the right to the use of waters acquired under the provisions of the reclamation laws shall be appurtenant to the land irrigated.

II

The said master contract provides in Paragraph II and other paragraphs thereof that the United States shall furnish water to Member Units of the Agency and provides in Section 14 that the United States reserves the right to all waste, seepage and return flow water derived from water so furnished which escapes or discharges beyond the boundaries of the Agency.

Each of the contracts between the Agency and the Member Units referred to in the complaint provides that the water for Member Units and Water Users therein shall be "furnished" pursuant to the provisions of the said master contract and also provides that all waste, seepage and return flow water derived from water so furnished [fol. 670] which escapes or discharges beyond the boundaries of the Agency is reserved to the United States.

These answering defendants are informed and believe and therefore allege that the lands of the Santa Barbara coastal plain in which the lands within the boundaries of the Member Units are located are underlaid with sands and formations bearing percolating and underground waters and that water which seeps into lands within the boundaries of the Member Units finds it (sic) way into the said sands or formations and becomes a part of and is mingled with the percolating and underground waters underlying the said lands.

These answering defendants are further informed and believe and therefore allege that waste waters and return waters from the lands lying within the boundaries of the Member Units find their way into natural water courses and water channels and become a part of the water of such water courses and water channels and subject to the water rights and laws with respect to the waters of said water courses and water channels.

The said provisions of the master contract are invalid and void and beyond the powers granted by Congress to the Secretary of Interior as the contracting agent of the United States under the reclamation laws. The said contracts of the Agency and of said Member Units are invalid and void under California Law.

[fol. 671] Wherefore, defendants pray for judgment and relief as prayed for in their original answer herein.

Sherman Anderson, Alex W. Davis and W. P. Butcher, By s/ Sherman Anderson, Attorneys for defendants.

[fol. 681] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA BARBARA

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed October 22, 1952

In this cause the default of all the defendants, except the defendants Maurice A. Balaam, Ted R. Holden, William C. Sudden, W. G. Moore, R. E. Sudden, Charles E. Sudden and L. H. Crandall (hereinafter referred to as the "Answering Defendants") was duly entered on order of the Court May 1, 1950. Thereafter this cause came on regularly for hearing before the Court on November 14, 1951, sitting without a jury, the Honorable Charles F. Blackstock, Judge of the Superior Court, presiding, Plaintiff appearing by Vern B. Thomas, Esquire, District Attorney of said County and Lawrence M. Parma, Deputy District Attorney of said County, and the Answering Defendants appearing by Sherman Anderson, Esquire, and W. P. Butcher, Esquire. And evidence having been introduced and the cause submitted to the Court for decision on Plaintiff's Complaint and that portion of the Answer of the Answering Defendants filed August 18, 1950, from pages 1 to 12 inclusive (but exclusive of the affirmative defenses alleged in pages 13 to 26 inclusive) as said Answer is amended with respect to the Answer to the Second, Third, Fourth and Fifth Causes of Action in Plaintiff's Complaint by pages 1 and 2 of an "Amendment" to said [fol. 682] Answer verified December 4, 1950 and filed on or about January 2, 1951 (but exclusive of the First and Ninth Affirmative Defenses contained at pages 2 to 5 inclusive of said "Amendment") and as said Answer was further amended with respect to said Answer to said Second, Third, Fourth and Fifth causes of action in said

Complaint by an oral stipulation entered into at the time of trial whereby said portions of said Answer were amended to include the allegation by interlineation on the face of said Answer that the elections referred to in said cause of action were not carried on or conducted in the manner required by sections 31157, 31407, and 31391 of the Water Code of the State of California, and the Court having duly considered the cause and being fully advised in the premises, the Court now makes its findings of fact as follows:

I

The Santa Barbara County Water Agency (hereinafter for purposes of brevity sometimes referred to as the "Agency") now is, and at all times herein mentioned continuously was, and has been a district of the State of California duly and regularly organized and existing under and by virtue of the laws of the State of California, to wit: that certain Act of the Legislature of the State of California known as "The Santa Barbara County Water Agency Act", being Chapter 1501 of the Statutes of the Fifty-Sixth (56th) Session of the Legislature of the State [fol. 683] of California (1945 California Statutes, Chapter 1501, Pages 2780-2801), approved July 18, 1945, as amended by that certain Act of the Legislature of the State of California, being Chapter Twelve (12) of the Statutes of the State of California enacted at the 1949 Regular Session of the Legislature of the State of California, approved February 3, 1949 (1949 California Statutes, Chapter 12, Pages 18 to 27).

II

That by an Act of the First Extra Session of the Fifty-Sixth (56th) Legislature of the State of California entitled "An act to validate the organization, boundaries, governing officers or boards, acts, proceedings and bonds of public bodies, to take effect immediately", approved February 12, 1946 (Chapter 17 of the 1st Extra Session of the 56th Legislature, 1947 California Statutes, pages 20-23), and by an Act of the 1949 Regular Session of the Legislature of the State of California entitled "An act to validate the organization, boundaries, governing officers or boards, acts,

proceedings, elections, and bonds of public bodies as herein defined, declaring the urgency of this act, to take effect immediately", approved June 30, 1949 (1949 California Statutes, Chapter 781, pages 1508-1511), said Legislature confirmed, validated, and declared legally established the boundaries of the Santa Barbara County Water Agency, and declared the members of the Board of Directors and [fol. 684] the officers of said Agency theretofore elected or appointed and acting as such were the legally appointed or elected, qualified and acting members of such Board of Directors and officers.

III

That all of the allegations of the following-numbered paragraphs of said Complaint are true, to-wit: paragraphs III, IV, V, VI, VII, VIII, IX and X.

That all the recitations and findings contained in Resolution Number Nine (9) of the Board of Directors of said Agency, referred to in paragraph V of said Complaint, were true and correct and valid and supported by appropriate evidence.

IV

That said report of said California Districts Securities Commission is in the words and figures as embodied in Plaintiff's Exhibit Number One (1) introduced in evidence at the trial hereof. That while said Master Contract was submitted to the said Commission for its report, as aforesaid, the laws of the State of California did not require such a submission or any submission of said contract to said Commission for any purpose whatsoever, and said submission was needless.

V

That all of the allegations of the following-numbered paragraphs of said Complaint are true, to-wit: paragraphs [fol. 685] XII, XIII, XIV, XV, XVI (and the Ordinance of the City of Santa Barbara referred to in said paragraph XVI being in the form and words and figures contained in Plaintiff's Exhibit Number Three (3) introduced in evidence at the trial hereof), and XVII. That a true copy of

said contract between said Agency and said City of Santa Barbara is attached to the Complaint as Exhibit "D".

VI

That all of the allegations of the following-numbered paragraphs of said Complaint are true, to-wit: paragraphs XVIII (and the Ordinance of the Carpinteria County Water District referred to in said paragraph XVIII being in the form and words and figures contained in Plaintiff's Exhibit Number Four (4) introduced in evidence at the trial hereof), XIX and XX. That while the execution and delivery of said contract between said Agency and said Carpinteria County Water District (a true copy of which is attached to the Complaint as Exhibit "E") was duly and regularly authorized by said last referred to election, said execution and delivery independently of said election was also duly and regularly authorized by Resolution Number Fifty-Five (55) of the Board of Directors of said Carpinteria County Water District referred to in paragraph XIX of said Complaint.

VII

That all of the allegations of the following numbered [fol. 686] paragraphs of said Complaint are true, to-wit: paragraphs XXI (and the Ordinance of the Goleta County Water District referred to in said paragraph XXI being in the form and words and figures contained in Plaintiff's Exhibit Number Five (5) introduced in evidence at the trial hereof), XXII and XXIII. That while the execution and delivery of said contract between the said Agency and said Goleta County Water District (a true copy of which is attached to the Complaint as Exhibit "F") was duly and regularly authorized by said last referred to election, said execution and delivery, independently of said last referred to election, was also duly and regularly authorized by Resolution Number Fourteen (14) of the Board of Directors of said Goleta County Water District referred to in paragraph XXII of said Complaint.

VIII

That all of the allegations of the following numbered paragraphs of said Complaint are true, to-wit: paragraphs

XXIV (and the Ordinance of the Montecito County Water District referred to in said paragraph XXIV being in the form and words and figures contained in Plaintiff's Exhibit Number Six (6) introduced in evidence at the trial hereof), XXV and XXVI. That while the execution and delivery of said contract between said Agency and the Montecito County Water District (a true copy of which is attached to the Complaint as Exhibit "G") was duly and regularly [fol. 687] authorized by said last referred to election, said execution and delivery, independently of said last referred to election, was also duly and regularly authorized by Resolution Number Two Hundred Ninety-three-A (293-A) of the Board of Directors of said Montecito County Water District referred to in paragraph XXV of said Complaint.

IX

That all of the allegations of the following numbered paragraphs of said Complaint are true, to-wit: paragraphs XXVII (and the Ordinance of the Summerland County Water District referred to in said paragraph XXVII is in the form and words and figures contained in Plaintiff's Exhibit Number Seven (7) introduced in evidence at the trial hereof), XXVIII and XXIX. That while the execution and delivery of said contract between said Agency and said Summerland County Water District (a true copy of which is attached to the Complaint as Exhibit "H") was duly and regularly authorized by said last referred to election, said execution and delivery, independently of said last referred to election, was also duly and regularly authorized by the resolution of the Board of Directors of said Summerland County Water District referred to in paragraph XXVIII of said Complaint.

X

That all of the allegations of the following numbered paragraphs of said Complaint are true, to-wit: paragraphs [fol. 688] XXX, XXXI, XXXII, and XXXIII. That the form, contents and provisions of all said contracts between the Agency and the City of Santa Barbara, Goleta County Water District, Montecito County Water District, Carpinteria County Water District, Summerland County Water

District and Santa Ynez River Water Conservation District were approved by the United States of America.

XI

That all the allegations of paragraphs Number XXXIV and XXXV of said Complaint are true. That on December 20, 1949, said Agency notified in writing said County Water Districts and said City of Santa Barbara of the proposed filing of the instant action as required by Article 35 of the contract of said Agency with said City and by Article 36 of the contracts of said Agency with said County Water Districts.

XII

That said Master Contract in all respects complies with the requirements of the statutes and laws of the United States of America applicable thereto.

XIII

That said Master Contract was ratified and confirmed by the United States of America by virtue of the enactment of Public Law 350, 81st Congress, Chapter 680, 1st Session, making appropriations for the Department of the Interior for the fiscal year ending June 30, 1950 and for [fol. 689] other purposes, which Act reads in part, so far as is here applicable, as follows:

> That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of the Interior for the fiscal year ending June 30, 1950, namely:
>
> . . . . . .
>
> Bureau of Reclamation
>
> . . . . . .
>
> Construction: For construction and continuation of construction of the following projects in not to exceed the following amounts, all to be reimbursable (except as otherwise provided by law) under the reclamation law, to remain available until expended for carrying out projects (including the construction of transmis-

sion lines) previously or herein authorized by Congress:

Santa Barbara County project, California, Cachuma Unit, $5,185,000: *Provided,* That none of the funds appropriated herein shall be available for construction of physical works or the acquisition of rights-of-way until the condition contained in the contract between the United States and the Santa Barbara County Water Agency, executed September 12, 1949, concerning participation by member districts shall have been met, and the outcome of elections within the member districts shall have been favorable in sufficient member districts to approve the disposition of the quantity of water as provided in said contract to make the same effective;

Boise project, Idaho . . . . . ."

XIV

That the denials contained in paragraphs I, II and III of the Answering Defendants' Answer to the First Cause of Action of the Complaint are not true.

[fol. 690]

XV

That the denials contained in the first paragraph of paragraph IV of the Answering Defendants' Answer to the First Cause of Action of the Complaint are not true. That neither the United States of America nor said Agency, at the time of the trial hereof, or at any time prior thereto, had any water to furnish under said Master Contract, and that the only rights that the United States of America and said Agency, or either of them, have are by virtue of certain applications of the United States of America to appropriate water from the Santa Ynez River now pending before the Division of Water Resources of the State of California. That it is not necessary that the United States of America or the Agency now or at any time prior hereto, have any such water, there being no duty on either the United States of America or the Agency to acquire any water until the time for delivery of such water, as specified

in said various contracts, has arrived, which time has not yet arrived.

XVI

That the denials contained in paragraphs V to XXVIII, both numbers inclusive, of the Answering Defendants' Answer to the First Cause of Action of the Complaint are not true.

XVII

That each of the Answering Defendants at the time of the establishment of the Agency on September 15, 1945, [fol. 691] and continuously at all times thereafter up to and including the time of trial, was a resident of the Agency, an owner of property, an owner of property therein, a registered voter therein, and a taxpayer therein and paid all the Agency taxes levied during said period on his said property.

XVIII

That all of the property within the Agency, including the property of each Answering Defendant was, is and will be benefited by the establishment of the Agency and by the execution and performance of said Master Contract between the United States of America and said Agency, and the execution and performance of said contracts between said Agency and the City of Santa Barbara and said County Water Districts.

XIX

That on October 2, 1945, Plaintiff filed an in rem action in the Superior Court of the State of California in and for the County of Santa Barbara, numbered 37417, and entitled "The Santa Barbara County Water Agency, a public district and body politic and corporate, Plaintiff, vs. The State of California, All Property Owners in said Agency, All Residents in said Agency, All Registered Voters in said Agency, and All Persons Interested, Defendants," which action was instituted under and by virtue of section 16 of the Santa Barbara County Water Agency in order to determine the legality of the existence of the Plaintiff. That

[fol. 692] judgment in said action numbered 37417 was duly and regularly rendered and entered February 14, 1946 in favor of Plaintiff therein and against the State of California, all the defendants therein and against all persons whomsoever adjudging that said Plaintiff was a legally existing and was a legal public district and body politic and corporate, which judgment became final and was never appealed from nor set aside.

XX

That the Answering Defendants herein were parties defendant to the action referred to in paragraph XIX of these Findings of Fact, and are bound and concluded by the judgment therein rendered.

XXI

That in reliance upon the judgment rendered in said action numbered 37417, the Agency negotiated and executed all of the aforementioned contracts, levied taxes and proceded (sic) to exercise powers granted it under the laws of California.

XXII

That although the Answering Defendants herein were parties to said action numbered 37417, each and every one of them failed, and neglected to appear therein and assert the alleged illegality of the Agency, including their contentions that their property was not benefited by the creation of the Agency, that the Agency was violative of [fol. 693] Section 1 of the Fourteenth Amendment to the Constitution of the United States of America, and violative of Article IV, Section 31, Article IV, Section 25 (33), Article XI, Section 6 and Article XI, Section 12 of the Constitution of California, all of which contentions could have been presented and asserted before the court in said action number 37417.

That the answering Defendants did not seek to raise the last mentioned contentions relative to the alleged illegality and unconstitutionality of the Agency until they commenced, as plaintiffs, in said Superior Court on January 21,

1950 an action for declaratory relief, numbered 43831 and entitled "Maurice A. Balaam, Ted R. Holden, William G. Sudden, W. G. Moore, R. E. Sudden, Charles E. Sudden and L. H. Crandall, Plaintiffs, vs. Santa Barbara County Water Agency, etc., et al."

XXIII

That by reason of their conduct as aforesaid, the Answering Defendants have waived their right to urge herein the alleged illegality of the Agency.

XXIV

That by reason of their conduct as aforesaid and the reliance of the Agency on the judgment rendered in said action numbered 37417 establishing the legality of the Agency, said Answering Defendants are estopped from urging herein the alleged illegality of the Agency.

[fol. 694]

XXV

That neither the Agency nor any of the powers vested in it by the laws of California is illegal or unconstitutional.

XXVI

That said Master Contract between the United States of America and the Agency, and each and every term, condition and provision of said contract, is valid, legal, effective and authorized by law, and is binding upon the parties to said contract.

XXVII

That said contracts between said Agency and the City of Santa Barbara and said County Water Districts, and each and every term, condition and provision of each said last mentioned contracts is valid, legal, effective and authorized by, and is binding upon the respective parties to said last mentioned contracts.

XXVIII

That none of the Answering Defendants is an owner of property within, or a registered voter within or resident in said City of Santa Barbara nor in any of said County Water Districts.

Second Cause of Action

XXIX

That all of the allegations contained in paragraphs I to IX, both numbers inclusive, of the Second Cause of [fol. 695] Action contained in the Complaint are true, and Findings of Fact numbered X to XXVIII, both numbers inclusive, are hereby incorporated herein by reference as to said Second Cause of Action.

XXX

That the denials contained in paragraphs I, II, and III of the Answer of the Answering Defendants to the Second Cause of Action of the Complaint, as said Answer was amended by an amendment filed January 2, 1951 and as further amended at the trial hereof (hereinafter referred to as the "Amended Answer") are not true except to the extent the denials in said paragraph I, incorporating the Answer to the First Cause of Action, have been found to be true in Findings of Fact Number XV.

XXXI

That the allegations and denials of paragraph IV of said Amended Answer to the Second Cause of Action of the Complaint are true but that the contract of said Carpinteria County Water District was a contract with said Agency and not with the United States of America; that it was not necessary for said Carpinteria County Water District to comply with sections 31153, 23223, 23224, 31157, 31407 and 31391 of the Water Code. That the elections mentioned in said Second Cause of Action was duly and regularly carried on and conducted in compliance with the provisions of law applying to initiative ordinances in a county water district.

[fol. 696] *Third Cause of Action*

XXXII

That all of the allegations contained in paragraphs I to IX, both numbers inclusive, of the Third Cause of Action contained in the Complaint are true, and Findings of Fact numbered I to XXVIII, both numbers inclusive, are hereby incorporated herein by reference as to said Third Cause of Action.

XXXIII

That the denials contained in paragraphs I, II and III of the Answering Defendants' Amended Answer to the Third Cause of Action of the Complaint are not true except to the extent the denials in said paragraph I, incorporating the Answer to the First Cause of Action, have been found to be true in Findings of Fact numbered XV.

XXXIV

That the allegations and denials of paragraph IV of said Amended Answer to the Third Cause of Action of the Complaint are true but that the contract of said Goleta County Water District was a contract with said Agency and not with the United States of America; that it was not necessary for said Goleta County Water District to comply with sections 31153, 23223, 23224, 31157, 31407 and 31391 of the Water Code. That the election mentioned in [fol. 697] said Third Cause of Action was duly and regularly carried on and conducted in compliance with the provisions of law applying to initiative ordinances in county water districts.

Fourth Cause of Action

XXXV

That all of the allegations contained in paragraphs I to IX, both numbers inclusive, of the Fourth Cause of Action contained in the Complaint are true, and Findings of Fact numbered I to XXVIII, both numbers inclusive, are hereby incorporated herein by reference as to said Fourth Cause of Action.

XXXVI

That the denials contained in paragraphs I, II and III of the Answering Defendants' Amended Answer to the Fourth Cause of Action of the Complaint are not true except to the extent the denials in said paragraph I, incorporating the Answer to the First Cause of Action, have been found to be true in Findings of Fact numbered XV.

XXXVII

That the allegations and denials of paragraph IV of said Amended Answer to the Fourth Cause of Action of the Complaint are true but that the contract of said Montecito County Water District was a contract with said Agency and not with the United States of America; that it was not necessary for said Montecito County Water District to comply with sections 31153, 23223, 23224, 31157, [fol. 698] 31407 and 31391 of the Water Code. That the election mentioned in said Fourth Cause of Action was duly and regularly carried on and conducted in compliance with the provisions of law applying to initiative ordinances in county water districts.

Fifth Cause of Action

XXXVIII

That all of the allegations contained in paragraphs I to IX, both numbers inclusive, of the Fifth Cause of Action contained in the Complaint are true, and Findings of Fact numbered I to XXVIII, both numbers inclusive, are hereby incorporated herein by reference as to said Fifth Cause of Action.

XXXIX

That the denials contained in paragraphs I, II and III of the Answering Defendants' Amended Answer to the Fifth Cause of Action of the Complaint are not true except to the extent the denials in said paragraph I, incorporating the Answer to the First Cause of Action, have been found to be true in Findings of Fact numbered XV.

XL

That the allegations and denials of paragraph IV of said Amended Answer to the Fifth Cause of Action of the Complaint are true but that the contract of said Summerland County Water District was a contract with said Agency and not with the United States of America; that [fol. 699] it was not necessary for said Summerland County Water District to comply with sections 31153, 23223, 23224, 31157, 31407 and 31391 of the Water Code. That the election mentioned in said Fifth Cause of Action was duly and regularly carried on and conducted in compliance with the provisions of law applying to initiative ordinances in county water districts.

Sixth Cause of Action

XLI

That all of the allegations contained in paragraphs I to IX, both numbers inclusive, of the Sixth Cause of Action contained in the Complaint are true, and Findings of Fact numbered I to XXVIII, both numbers inclusive, are hereby incorporated herein by reference as to said Sixth Cause of Action.

XLII

That the denials contained in paragraphs I, II and III of the Answering Defendants' Amended Answer to the Sixth Cause of Action of the Complaint are not true except to the extent the denials in said paragraph I, incorporating the Answer to the First Cause of Action, have been found to be true in Findings of Fact numbered XV.

[fol. 700] CONCLUSIONS OF LAW

And as conclusions of law from the foregoing facts, the Court finds:

I

That Plaintiff, the Santa Barbara County Water Agency, now is and continuously at all times since on and after September 15, 1945, has been a legal and valid district created, organized and existing under and by virtue of the

Santa Barbara County Water Agency Act (1945 California Statutes Chapter 1501, 1949 California Statutes Chapter 12).

II

That the aforesaid Santa Barbara County Water Agency Act as enacted by 1945 California Statutes Chapter 1501 and as amended by 1949 California Statutes Chapter 12, and each and every part thereof is valid and legal and does not contravene nor violate any provisions of the Constitution of the United States of America or the Constitution of California.

III

That on and prior to September 12, 1949 and continuously ever since said date the City of Santa Barbara has been a municipal corporation, and the Montecito County Water District, the Goleta County Water District, the Summerland County Water District and the Carpinteria County Water District each have been a county water district, said city and [fol. 701] said county water districts each being duly, validly and legally organized, established and existing under and by virtue of the laws of the State of California.

IV

That the aforesaid Master Contract entitled "Contract for the Furnishing of Water To Member Units of Santa Barbara County Water Agency" executed by the Plaintiff and the United States of America, acting by and through Richard L. Boke, Regional Director, Region 2, Bureau of Reclamation, United States Department of the Interior, dated September 12, 1949, a true copy of which is attached to the Complaint as Exhibit "A", was duly executed on September 12, 1949 by the respective parties thereto, and that said Master Contract is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of the Santa Barbara County Water Agency and the United States of America to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract have been taken, had and performed in the manner required by law

and that said contract is valid and legally binding upon, against and in favor of said Santa Barbara County Water Agency and the United States of America.

V

That the certain contract hereinbefore referred to, entitled "Contract for Furnishing Water to Carpinteria [fol. 702] County Water District", a true copy of which is attached to the Complaint as Exhibit "E", dated September 12, 1949, and executed by and between said Agency and the Carpinteria County Water District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Carpinteria County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of the said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last-mentioned is valid and legally binding upon, against and in favor of said Agency and said Carpinteria County Water District.

VI

That the certain contract hereinbefore referred to, entitled "Contract for Furnishing Water to Goleta County Water District", a true copy of which is attached to the Complaint as Exhibit "F", dated September 12, 1949, and executed by and between said Agency and the Goleta County District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Goleta County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract [fol. 703] last mentioned is valid and legally binding upon, against and in favor of said Agency and said Goleta County Water District.

VII

That the certain contract, hereinbefore referred to, entitled "Contract for Furnishing Water to Montecito County

Water District", a true copy of which is attached to the Complaint as Exhibit "G", dated September 12, 1949, and executed by and between said Agency and the Montecito County Water District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Montecito County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last mentioned is valid and legally binding upon, against and in favor of said Agency and said Montecito County Water District.

VIII

That the certain contract hereinbefore referred to, entitled "Contract for Furnishing Water to Summerland County Water District", a true copy of which is attached to the Complaint as Exhibit "H", dated December 8, 1949, and executed by and between said Agency and the Summerland County Water District is, and that each and every of [fol. 764] the terms and provisions thereof are, lawful valid and within the lawful power of said Agency and said Summerland County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last mentioned is valid and legally binding upon, against and in favor of said Agency and said Summerland County Water District.

IX

That the certain contract hereinbefore referred to, entitled "Contract for Furnishing Water to City of Santa Barbara," a true copy of which is attached to the Complaint as Exhibit "D", dated September 12, 1949, and executed by and between said Agency and the City of Santa Barbara is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said City of Santa Barbara to make, enter into

and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last mentioned is valid and legally binding upon, against and in favor of said Agency and said City of Santa Barbara.

X

That the Answering Defendants herein are bound and [fol. 705] concluded by the judgment rendered in the action referred to in paragraph XIX of the Findings of Fact herein, and that said judgment is res adjudicata as to the Answering Defendants herein.

XI

That judgment should be entered in accordance herewith in favor of Plaintiff herein and against all defendants herein and it is so ordered.

s/ Chas. F. Blackstock, Judge of the Superior Court Assigned.

[File endorsement omitted]

[fol. 706] In the Superior Court of the State of California in and for the County of Santa Barbara

Judgment—October 20, 1952

In this cause the default of all the defendants, except the defendants Maurice A. Balaam, Ted R. Holden, William C. Sudden, W. G. Moore, R. E. Sudden, Charles E. Sudden and L. H. Crandall (hereinafter referred to as the "Answering Defendants") was duly entered in order of the Court May 1, 1950. Thereafter this cause came on regularly for hearing before the Court on November 14, 1951, sitting without a jury, the Honorable Charles F. Blackstock, Judge of the Superior Court, presiding, Plaintiff appearing by Vern B. Thomas, Esquire, District Attorney of said County and Lawrence M. Parma, Deputy District Attorney

of said County, and the Answering Defendants appearing by Sherman Anderson, Esquire, and W. P. Butcher, Esquire. And evidence having been introduced and the cause submitted to the Court for decision on Plaintiff's Complaint and that portion of the Answer of the Answering Defendants filed August 18, 1950, from pages 1 to 12 inclusive (but exclusive of the affirmative defenses alleged in pages 13 to 26 inclusive) as said Answer is amended with respect to the Answer to the Second, Third, Fourth and Fifth Causes of Action in Plaintiff's Complaint by pages 1 and 2 of an "Amendment" to said Answer verified [fol. 707] December 4, 1950 and filed on or about January 2, 1951 (but exclusive of the First and Ninth Affirmative Defenses contained at pages 2 to 5 inclusive of said "Amendment") and as said Answer was further amended with respect to said Answer to said Second, Third, Fourth and Fifth causes of action in said Complaint by an oral stipulation entered into at the time of trial whereby said portions of said Answer were amended to include the allegation by interlineation on the face of said Answer that the elections referred to in said causes of action were not carried on or conducted in the manner required by sections 31157, 31407, and 31391 of the Water Code of the State of California, and the Court having duly considered the cause and being fully advised in the premises, and the Court having heretofore made and caused to be filed herein its written Findings of Fact and Conclusions of Law;

Now, Therefore, by Reason of the Law and the Findings of Fact Aforesaid It Is Hereby Ordered, Adjudged and Decreed as Follows:

I

That all of the Defendants named in the Complaint and Summons herein have each and all been duly served with process and summoned to appear and answer the Complaint of the Plaintiff herein by the publication of said summons pursuant to the order of the Court and that such publication was in the form and manner and was published for the time and in the manner prescribed by law, and that the legal [fol. 708] time for answer has since expired and no Defendants having answered herein except said Answering De-

fendants, the default of all parties defendant except said Answering Defendants has been duly entered according to law.

II

That this action is lawfully presented as an action in rem and this Court has jurisdiction of the subject matter and of all parties hereto.

III

That the Plaintiff, the Santa Barbara County Water Agency, now is and continuously at all times since September 15, 1945, has been a legal and valid district created, organized and existing under and by virtue of the Santa Barbara County Water Agency Act (1945 California Statutes, Chapter 1501, 1949 California Statutes, Chapter 12) and is lawfully and constitutionally vested with all the powers, authorities and prerogatives conferred by said Act.

IV

That the aforesaid Santa Barbara County Water Agency Act as enacted by 1945 California Statutes, Chapter 1501, and as amended by 1949 California Statutes, Chapter 12, and each and every part thereof is valid and legal and does not contravene nor violate any provision of the Constitution of the United States of America or the Constitution of California.

[fol. 709]

V

That on and prior to September 12, 1949 and continuously ever since said date the City of Santa Barbara has been a municipal corporation, and the Montecito County Water District, the Goleta County Water District, the Summerland County Water District and the Carpinteria County Water District each have been a county water district, said city and said county water districts each being duly, validly and legally organized, established and existing under and by virtue of the laws of the State of California.

VI

That a certain contract entitled "Contract For The Furnishing of Water To Member Units of Santa Barbara County Water Agency," executed by the Plaintiff and the United States of America, acting by and through Richard L. Boke, Regional Director, Region 2, Bureau of Reclamation, United States Department of the Interior, dated September 12, 1949, a true copy of which is attached to the Complaint herein as Exhibit "A" (sometimes called the "Master Contract") was duly executed on September 12, 1949 by the respective parties thereto, and that said Master Contract is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of the Santa Barbara County Water Agency and the United States of America to make, enter into and carry out, and that all proceedings leading up to and [fol. 710] including the execution of said contract have been taken, had and performed in the manner required by law and that said contract is valid and legally binding upon, against and in favor of said Santa Barbara County Water Agency and the United States of America, and is the lawful, legal and binding act of each of the parties thereto.

VII

That the certain contract entitled "Contract For Furnishing Water to Carpinteria County Water District", a true copy of which is attached to the Complaint herein as Exhibit "E", dated September 12, 1949, and executed by and between said Agency and the Carpinteria County Water District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Carpinteria County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last mentioned is valid and legally binding upon, against and in favor of said Agency and said Carpinteria County Water District, and is the lawful, legal and binding act of each of the parties thereto.

VIII

That the certain contract entitled "Contract for Furnishing Water to Goleta County Water District," dated Septem-
[fol. 711] ber 12, 1949, a true copy of which is attached to the Complaint as Exhibit "F", and executed by and between said Agency and the Goleta County Water District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Goleta County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last mentioned is valid and legally binding upon, against and in favor of said Agency and said Goleta County Water District, and is the lawful, ~~legal~~ and binding act of each of the parties thereto.

IX

That the certain contract entitled "Contract for Furnishing Water to Montecito County Water District", a true copy of which is attached to the Complaint as Exhibit "G", dated September 12, 1949, and executed by and between said Agency and the Montecito County Water District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Montecito County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last men-
[fol. 712] tioned is valid and legally binding upon, against and in favor of said Agency and said Montecito County Water District, and is the lawful, legal and binding act of each of the parties thereto.

X

That the certain contract entitled "Contract for Furnishing Water To Summerland County Water District", a true copy of which is attached to the Complaint as Exhibit "H", dated December 8, 1949, and executed by and between said

Agency and the Summerland County Water District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Summerland County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last mentioned is valid and legally binding upon, against and in favor of said Agency and said Summerland County Water District, and is the lawful, legal and binding act of each of the parties thereto.

XI

That the certain contract entitled "Contract for Furnishing Water to City of Santa Barbara", a true copy of which is attached to the Complaint as Exhibit "D", dated September 12, 1949, and executed by and between said Agency and the City of Santa Barbara is, and that each and every of the terms and provisions thereof are, lawful and valid [fol. 713] and within the lawful power of said Agency and said City of Santa Barbara to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last mentioned is valid and legally binding upon, against and in favor of said Agency and said City of Santa Barbara, and is the lawful, legal and binding act of each of the parties thereto.

XII

That the organization and existence of said Agency, City of Santa Barbara and said County Water Districts and each of them and the validity, legality and constitutionality of the powers, authority and prerogatives vested in them by the laws of the State of California is hereby confirmed and approved.

XIII

That each of said contracts aforesaid, and each and every term and provision thereof, is and are in all respects valid

and authorized by law and said contracts, and each and every term and provision thereof is and are in all respects a valid, legal and subsisting contract, binding upon, against and in favor of the respective parties thereto, and said contracts and each and every term and provision thereof, and each and every act of the respective parties thereto, leading up to and including the executions and deliveries there-[fol. 714] of, is hereby confirmed, approved and adjudged to be valid, legal and constitutional.

XIV

That said Answering Defendants and each of them has waived and is estopped from asserting the illegality or unconstitutionality of said Plaintiff and of said Santa Barbara County Water Agency Act and said Santa Barbara County Water Agency Act as amended.

Done in open Court this 20th day of October, 1952.

s/ Chas. F. Blackstock, Judge of the Superior Court.

Entered October 22nd, 1952, in Judgment Book A-21, Page 333.

[File endorsement omitted]

[fol. 777] IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA BARBARA

REPORTER'S TRANSCRIPT OF TESTIMONY

Santa Barbara, California, Wednesday, November 14, 1951, 10 AM

The Court: All right.

Mr. Anderson: May it please the Court, in the amendment to the answer of the defendant Balaam, et al, which was filed in this court on the 2nd of January of this year——

Mr. Butcher: We had better wait until we get the clerk here; he has that file.

Mr. Anderson: Well, I think we can state, perhaps, in the absence of the clerk, what we desire to do.

Mr. Butcher: Go ahead.

Mr. Anderson: We have alleged in Paragraph IV of our Answer to the Second, Third, Fourth and Fifth Causes of Action that the notice of the special election and the proceedings had thereunder were not carried on or conducted in the manner required by Sections 31153, 23223, and 23224 of the Water Code of California. We desire to add to those sections specified Sections 31157, 31407 and 31391, by interlineation in the Second, Third, Fourth and Fifth——

The Court: What is that 31257,—or what?

Mr. Anderson: The first one is 31157.

The Court: Yes. What code is it?

Mr. Anderson: Of the Water Code of California.

The Court: The Water Code, yes.

Mr. Anderson: And the second section we desire to add is 31407.

[fol. 778] The Court: And 31391.

Mr. Anderson: Yes, 31391, all of the Water Code of California, and we desire that those be inserted by interlineation in the amendment to the answer of the defendants, which was filed on or about January 3, 1951.

The Court: Do you want to amend on the face of your answer by interlineation?

Mr. Anderson: I beg your pardon?

The Court: Do you want to amend on the face of the answer by interlineation?

Mr. Anderson: Yes, your Honor.

The Court: I don't suppose there is any objection.

Mr. Parma: No. It is stipulated it may be done in each of the defenses, to the——

Mr. Anderson: Second, Third, Fourth and Fifth——

Mr. Parma: Causes of action.

Mr. Anderson: (Continuing) —Answers to them. In each instance it is Paragraph IV of the amendment of the answer of the defendants with respect to Plaintiff's Second, Third, Fourth and Fifth Causes of Action.

The Court: All right.

Mr. Parma: May it also be stipulated, for the purpose of the record, Mr. Anderson and Mr. Butcher, that Mr. Alex

Davis, who was one of the attorneys of record, has died, and it was not necessary for me to put his name on all my services?

Mr. Anderson: That may be so stipulated.

[fol. 779] The Court: What do we have here,—a trial?

Mr. Parma: Yes, your Honor. This is the time it has been heretofore set for the trial in the action, and I think the issues are framed by the plaintiff's complaint and by the general denials contained in the original answer of the defendants, filed on August 8, 1951, together with certain amendments to their answer, which was verified, I think, on January 2, 1951.

Mr. Butcher: Yes.

The Court: Aren't you going to have a reporter? Oh, you have got one there. I couldn't see.

Mr. Parma: We are ready to proceed at this time.

The Court: All right. Go ahead.

Mr. Parma: I might state at the outset, your Honor, that in my view of the case, the issues presented will be merely, for the most part, legal, and there will be very little factual evidence introduced. I think, for the most part, the basic facts are admitted by the pleadings and by each party, and that, therefore, the issues ultimately to be resolved consist mainly of legal problems. I don't know how your Honor wants me to proceed, but I thought, unless your Honor has some objection, I would go through the complaint, paragraph by paragraph, with the answers so that we can summarize them and show what the issues are, and then—

The Court: All right. Go ahead in your own way.

Mr. Parma: The first paragraph of the First Cause of [fol. 780] Action in the complaint, your Honor, alleges that the Water Agency is a district organized under the so-called Water Agency Act and its amendments, which are in 1945 California Statutes, Chapter 1501, and 1949 Statutes, Chapter 12. The answer on file admits the passage and signing of the Statutes, but denies every other inference as to its legality or to the effectiveness of those Statutes. I do not believe that on that portion of the complaint any evidence is necessary. I believe your Honor can take

judicial notice of the Statutes and draw his own conclusions as a legal matter.

Paragraph II of the complaint alleges the validation of the establishment and boundaries and offices of the Agency by two California Statutes,—1947 Statutes, First Extra Session of the 56th Legislature, pages 20 to 23, and the 1949 Statutes, Chapter 781. The answer on this issue admits the passage of the Statutes, but denies that they are legally effective, as affecting the Agency, and that they are totally without any——

Mr. Butcher: Mr. Parma, that has to do with the establishment of the boundaries of the Agency, hasn't it?

Mr. Parma: The boundaries, the establishment—the boundaries and the election and appointment of officers.

Paragraph III of the First Cause of Action alleges that C. W. Bradbury, Paul E. Stewart, R. B. McClellan, T. A. Twitchell and William N. Hollister were the Board of [fol. 781] Directors of the Agency ever since January 3, 1949, up to the time the complaint was filed; and that from September 15, 1945, to January 3, 1949, the Board of Directors was the same, except J. Monroe Rutherford was a director in place of William N. Hollister. It further alleges that T. A. Twitchell was the Chairman of the Board and J. E. Lewis was the Clerk.

As I construe the answer, it denies that the Agency was ever legally constituted and denies it has any legal constituted board of directors or officers. I don't believe any evidence is necessary on that point. I construe the answer to admit that these men purported to act and were purported to be appointed, but that their appointment was without legal effect.

Paragraph IV names the defendants in this first cause of action, and the answer makes no issue on that point.

Mr. Butcher: We just failed to deny it.

Mr. Parma: They just failed to deny it. They made no pleading to it.

Paragraph V alleges, in effect, that in order to get water for the Santa Ynez Water Conservation District, the

Goleta County Water District, the City of Santa Barbara, the Montecito, Summerland and Carpinteria County Water District's lands and inhabitants, the Agency, since about September 15, 1945, negotiated with the United States Bureau of Reclamation, and the Bureau of Reclamation [fol. 782] offered to supply water pursuant to the so-called master contract, which is attached as Exhibit A. Now, the answer admits the negotiations and admits that Exhibit A was signed, but it denies every other allegation and inference, and further alleges as follows: Denies that the United States or the said Agency ever has had or now has any water to furnish or sell as alleged in Paragraph V.

Paragraph VI of the First Cause of Action alleges that on September 12, 1949, the Board of Directors passed Resolution No. 9, finding that the Agency's liability under the proposed master contract could be repaid from the taxes levied under Section 10.1 of the Water Agency Act, plus funds received from proposed member unit contract payments, and that no agency election was necessary under Section 6.1 of the Water Agency Act, and authorizing the master contract to be executed by Mr. Twitchell and Mr. Lewis, as Chairman and Clerk of the Board. Resolution No. 9 is attached as Exhibit B. The answer admits that Resolution No. 9 was voted for in the form and time and place specified, but it denies every other allegation and inference of that particular paragraph, and alleges that the findings of Resolution No. 9 were not valid because no evidence is in support of them. I think that presents purely a legal issue, your Honor. We rely on the contracts which are attached to the complaint to show that the taxes noted, plus the payments to be made under the contracts [fol. 783] were sufficient to support the finding of the resolution.

Paragraph VII of the First Cause of Action alleges that the master contract was executed by the Agency on September 12, 1949, and delivered to the Bureau of Reclamation. The answer of the defendants admits that the master contract was signed, sealed and delivered as alleged, but denies every other allegation and any other inferences that can be

drawn. Under our view, I think that is another p. ly legal issue that needs no evidence introduced.

The eighth paragraph of the First Cause of Action alleges that on September 12, 1948, the United States, acting by Richard Boke, the Regional Director of District Two of the Bureau of Reclamation, executed the master contract, and that certain number and identifying marks were endorsed on it. The answer admits that the master contract was signed and delivered on the date and by the persons alleged, but denies each and every other allegation and inference. There is a question in my mind as to whether any evidence is needed on this point. There is also a question in my mind whether that allegation is meant to deny the legal authority of Mr. Boke to sign a Bureau of Reclamation contract on behalf of the United States, assuming the contract was valid. If that issue is raised under the pleadings, I would ask the Court to take judicial notice of Mr. Boke's position and authority; and, furthermore, I would ask the Court to take judicial notice of Public [fol. 784] Law 50 of the 81st Congress, Chapter 680, First Session.

Mr. Butcher: What chapter?

Mr. Parma: Chapter 680, First Session. That was an appropriation statute, your Honor, that was enacted after this contract was signed, and the Congress referred to the execution of the contract and made the appropriation to further the work of the Cachuma Project, which we believe ratified Mr. Boke's authority, in case there is any legal issue presented on it.

Paragraph IX alleges that on June 6, 1949, the Agency, by Resolution No. 7, approved the master contract as to form and directed that it be submitted to the District Securities Commission of the State of California. The answer admits the passage of the resolution on the date alleged and the form attached as Exhibit C, but denies each and every other allegation and inference to be drawn from the pleadings. I don't believe any further evidence is needed on that issue, either. It is purely one of law.

Paragraph X alleges that on June 14, 1949, the master contract was submitted by the Agency to the District Securities Commission, and no issue is made on that inasmuch as the answer does not plead on that particular paragraph.

Paragraph XI of the First Cause of Action alleges that the District Securities Commission made its examination, and on July 7, 1949, made its report concerning the proposed master contract, and the report is on file with the [fol. 785] Agency. The original answer does not plead to that particular paragraph; so, no issue was involved, but I intended to introduce a certified copy of the report and show what the District Securities Commission found.

Paragraph XII alleges that the contract as executed was the same as submitted to the District Securities Commission, except that at the suggestion of that Commission, Article 25B was added to the contract.

Mr. Anderson: Pardon me, Mr. Parma. I wonder if that is a clerical mistake. Shouldn't that have been 29B? The following paragraph in your complaint mentions 29B, which I think is the one that should have been referred to previously, perhaps.

Mr. Parma: No, no.

Mr. Anderson: It should have been 25B in the first instance and 29B in the second?

Mr. Parma: 29B in the second, yes. The answer denies that the alleged master contract ever has been or now is valid or legal, or that it ever was lawfully authorized or executed. However, it does not deny that the contract is the same as submitted, with that one exception; so I don't believe there is any issue on that, except as to the validity of the contract.

Paragraph XIII quotes Article 29B of the master contract, requiring execution within one year of sufficient member unit contracts to take 8100 acre feet of water per [fol. 786] year during the first five-year period of the contract, and providing that if this occurs, the master contract provisions, for districts that did not become member units, shall be disregarded. The answer has the same allegations in this regard as it did to Paragraph XII, to-wit,

that the contract is of no legal force or effect, but it does not deny that these provisions are in the contract; so I take it that no issue is presented, except a legal one, which goes all through the case, of the legality of this contract.

Paragraph XIV alleges that on September 12, 1949, by Resolution No. 10, the Board of Directors authorized the execution of six member unit contracts, so-called, of the Goleta, Montecito, Summerland and Carpinteria County Water Districts, the City of Santa Barbara, and the Santa Ynez River Water Conservation District. The original answer admits passage of the resolution as alleged and admits its provisions, but denies all other allegations and inferences. By that I take it that only a legal issue is raised as to the effect of the resolution as passed, as to whether it is legal or not.

Paragraph XV of the first cause of action alleges that on September 12, 1949, the Agency executed six member unit contracts that I have referred to before, and delivered them to the member units. The answer admits that the individuals mentioned signed and affixed the seals of the document referred to on the date alleged, and denies all [fol. 787] other allegations and inferences; which raises a question as to the legality of the contracts. But at this time I want to ask counsel a question.

Mr. Anderson, I note that you deny that these were delivered by the Agency to the various member unit contracts, and I wondered if that was put in there for a purpose, or whether we could stipulate that on or about September 12th, or shortly thereafter, Mr. Lewis, the Clerk, caused all the member unit contracts to be delivered in the sense that they were manually transmitted to the officers of these various proposed member units?

Mr. Anderson: Yes, I am agreeable to stipulating to that.

Mr. Parma: Paragraph XVI alleges on November 29, 1949, the City of Santa Barbara, pursuant to an election held therein on November 22, 1949, enacted an initiative ordinance authorizing its member unit contracts to be executed. The answer admits that the election was held on November 22nd, the electors voted in favor of the initia-

tive ordinance, but denies each and every other allegation and inference contained. I intend to introduce and offer for evidence the transcript of the election proceedings in the City of Santa Barbara, showing the steps that were taken in connection with that election, and otherwise than that, I think the issue is purely of law.

Paragraph XVII alleges that on November 29, 1949, the [fol. 788] City executed its contract and delivered it to the Water Agency, and the contract is attached as Exhibit D. The answer admits that on November 29th the City officials signed and delivered the City Agency member unit contract in the form of Exhibit D, but denies each and every other allegation and inference; so I take it that presents solely another question of law without introduction of further evidence on behalf of the plaintiff.

Paragraph XVIII alleges that on November 28, 1949, Carpinteria County Water District adopted an ordinance, after an election held on November 22, 1949, authorizing the Carpinteria Agency member unit contract to be executed. The answer admits that on November 22, 1949, the electors of that district voted in favor of the ordinance alleged, but denies all other allegations and inferences. In that connection we intend to introduce a certified copy of the election proceedings in Carpinteria, and, other than that, I think the issues are purely legal.

Paragraph XIX alleges that Carpinteria, on November 7th, adopted Resolution No. 55, authorizing the execution of the Carpinteria member unit contract I have referred to. The answer admits that on the date alleged, the Board of Directors of that district met as alleged and voted in favor of the resolution, and denies every other allegation and inference. I think that is purely another legal question. The resolution will be part of the election exhibit.

[fol. 789] Paragraph XX alleges that Carpinteria executed its contract on November 7, 1949, and delivered it to the Agency in the form of Exhibit E, attached to the complaint. The answer admits the officers of Carpinteria signed and dated the Carpinteria contract as alleged, but denies every other allegation and inference and presumption.

I might pause here. I think that is purely a question of law presented by this issue, except, again, that there is a denial as to the delivery of the contract to the agency, and I wondered if we could enter into the same stipulation in reference to all these member unit contracts: that on or about the date of the resolutions of the Board of Directors authorizing their execution, and after they were executed, the proper officers of the District manually transmitted those contracts back to Mr. Lewis' office here in the court house which are now on file.

Mr. Anderson: Yes, I think that is agreeable.

Mr. Parma: All right.

Paragraph XXI alleges, in regard to the Goleta County Water District, that on the 29th of November, 1949, pursuant to an election held on the 22nd of November, the electors adopted an initiative ordinance authorizing the execution of the contract, and the answer again admits that on November 22nd, the electors voted in favor of the Goleta contract, but denies each and every other allegation and inference.

[fol. 790] The Court: Is that the proper name there, in Paragraph XVII of the answer,—the electors of the Goleta County Water District?

Mr. Parma: Goleta County Water District is the proper name of that water district.

The Court: That is the proper name, is it?

Mr. Parma: Goleta, G-o-l-e-t-a, County Water District.

The Court: Well, they admit that on the date alleged in said Paragraph XXI, the electors of said Goleta County Water District—that was the allegation, wasn't it? You referred to Goleta County Water District, did you?

Mr. Parma: Yes, G-o-l-e-t-a.

The Court: All right.

Mr. Parma: We intend to offer a certified transcript of the election proceedings there, and I think, other than that, the issues are purely legal.

Paragraph XXII alleges that Goleta, on Decmeber (sic) 1, 1949, adopted Resolution No. 14, and by their Board of Directors authorizing the execution of its member unit

contract with the Agency. The answer admits that the Board of Directors met as alleged and voted in favor of the resolution, but denies every other allegation, inference and presumption, and so forth, contained. We believe that is another legal issue. The resolution will be in evidence because it is attached to the election proceedings.

Paragraph XXIII alleges that on December 1, 1949 [fol. 791] Goleta executed and dated its contract, and delivered it to the Agency in the form of Exhibit F, attached to the complaint. The answer admits that the officers signed and dated the contract in the form of the exhibit, but denies each and every other allegation and inference. I think that presents purely a legal problem, and we don't intend to offer any other evidence other than the stipulation as to the manual transmission of the contract back to the Agency.

Paragraph XXIV alleges that on November 28, 1949 the Montecito County Water District adopted an initiative ordinance pursuant to the election of November 22, 1949 authorizing the execution of the contract. The answer again admits that the election was held and the vote was favorable, but denies each and every other allegation inference, matter and thing. We will again offer for evidence the Montecito transcript in that regard, concerning the election.

Paragraph XXV alleges that on December 8, 1949, the Montecito Board of Directors adopted Resolution No. 293A, authorizing its officers to execute and deliver the contract, and the answer admits that that resolution was passed as alleged, but denies every other legal inference and presumption and matter. We will offer no evidence on that, except the resolution.

Paragraph XXVI alleges that on December 8, 1949 Montecito executed the contract, dated it September 12 [fol. 792] 1949, and delivered it to the Agency in the form of Exhibit G. The answer admits that the Montecito officers signed and dated the contract in the form of Exhibit G, but denies every other allegation and inference. We will offer no evidence on that point.

Paragraph XXVII alleges that on November 28, 1949, the Summerland County Water District adopted an initiative ordinance authorizing its contract with the Agency, pursuant to an election held November 22, 1949. The answer is similar in this regard, as it is to the other County Water District allegations; it admits the electors had the election on that date and voted in favor of the ordinance, but denies every other allegation and inference. We will introduce a transcript of the election proceedings as to that issue, and I think other than that the question is purely legal.

Paragraph XXVIII alleges that on December 8, 1949, Summerland adopted a resolution authorizing its officers to execute the contract. The answer admits that the Board of Directors met as alleged and voted in favor of the resolution, but denies every other allegation and inference. I think, again, that is a purely legal issue. The resolution will be in evidence, and that would be all that we would have on that issue.

Paragraph XXIX alleges that on December 8, 1949, the Summerland County Water District executed its con- [fol. 793] tract, dated it December 8, 1949, and delivered it to the Agency in the form of Exhibit H. The answer admits that on the date alleged the officers dated and signed the contract as it is in the form attached, but denies every other inference and presumption, matter and thing. We think that presents purely a legal issue, also.

Paragraph XXX alleges that the Santa Ynez River Water Conservation District failed to execute its contract. There is no issue on that. The answer did not deny that allegation.

Paragraph XXXI recites that all the member unit contracts, except Santa Ynez, were executed and delivered within one year of the execution of the master contract, and provide for 8200 acre foot of water per year during the first five-year period of the master contract, and it sets out the amounts of water per district. The answer admits that the member unit contracts were signed in the form attached to the complaint, but denies each and

every other allegation and inference. I don't believe there is anything but a legal issue presented there, because the transmission of the contracts on or about the date of their execution by the Water District and the City has been stipulated to, and that the contracts thereafter would speak for themselves as to the amount of water contracted for.

Paragraph XXXII alleges that each member unit contract provides it shall be subject to the terms of the master [fol. 794] contract. The answer admits that the member unit contracts are signed in the form attached to the complaint, but denies every other allegation and inference. That, I think, presents purely a legal question, because the contracts speak for themselves, because they have that provision in them. The legal effect as to whether the contracts or the provisions in the contracts are valid arises from the pleadings and the evidence before us.

Paragraph XXXIII recites that each member unit contract providing for water for irrigation use includes Articles 25, 26, 27 and 28 of the master contract with necessary revisions which were necessary, in the opinion of the Agency and the Secretary of the Interior. Those are the Excess Land Law Provisions, your Honor. The answer admits that Exhibits D to H, which were the member unit contracts, were signed in the form attached to the complaint, but denies all other allegations. I do not believe that that presents other than a legal issue, because the contracts speak for themselves as to what they contain in that regard; and, the only question, then, would be whether they were in a form approved by the Agency and the Secretary of the Interior. The fact that the Agency signed them is proof of its approval, and I have here a letter from myself to Mr. Boke, asking for the United States' approval, and a return letter from the Assistant Secretary of the Interior approving the member unit contracts, which I will offer in evidence as to the approval [fol. 795] of the United States.

Paragraph XXXIV alleges that all conditions precedent were performed by the Agency and the member units for

the execution of these contracts, and that both Agency and the member units are empowered to carry out the contract provisions and that the same are within their respective powers. That is denied in its entirety by the answer, and presents, I think, purely a question of law to be gathered by the Court and the terms of the contracts and the statutes of the United States and of the State of California.

Paragraph XXXV, and the last paragraph of the First Cause of Action, alleges that on December 19, 1949, the Agency Board of Directors adopted Resolution No. 13, authorizing the institution of this present action. The answer admits that that resolution was voted for, but denies all other allegations and inferences, and presents, I think, purely a legal question of no great moment, although we will introduce Resolution No. 13 in evidence.

The next five causes of action deal with each particular member unit contract, and I think it is only necessary to go through the first one, dealing with Carpinteria. There are only nine paragraphs in each cause of action. The second cause of action, dealing with Carpinteria County Water District, in Paragraph I, incorporates all the first cause of action, and the answer incorporates all the defenses to the answer to the First Cause of Action, so [fol. 796] that there is no further evidence introducible on that point. The evidence introduced on the First Cause of Action would go to this cause of action, too, and the issues under that particular paragraph are the same as they are on the First Cause of Action.

The second paragraph alleges who the defendants are, as to the Second Cause of Action. The original answer does not deny that, and there is, therefore, no issue on it,—no contested issue, rather.

The Third Cause of Action provides that at all times the Carpinteria County Water District was a duly established county water district, which is not denied by the answer.

Mr. Anderson: Pardon me, Mr. Parma. You said the Third Cause of Action; you meant the third paragraph.

Mr. Parma: The third paragraph. Thank you, Mr. Anderson.

Paragraph IV of the Second Cause of Action lists the officers of the Carpinteria County Water District during the time involved here, and the answer does not deny that, and, therefore, there is no contested issue in that regard.

Paragraph V of this Second Cause of Action merely alleges the president and secretary were proper officers to execute the contract. There is no denial of that in the answer; so, it is admitted, I guess, that if the contract was legal, these officers were the proper ones to execute it, although the question of the legality of the contract, of [fol. 797] course, goes all through the case in all these issues.

Mr. Butcher: Well, I think we denied legal prudence in there, in that paragraph.

Mr. Parma: No, not in Paragraph V.

Mr. Anderson: Not in Paragraph V.

Mr. Butcher: Pardon me.

Mr. Parma: Paragraph VI——

Mr. Butcher: I meant VI

Mr. Parma: Paragraph VI of the Second Cause of Action alleges that on September 26, 1949, this particular district adopted Ordinance No. 1, calling an election for November 22, 1949, to submit an initiative ordinance to the people. The answer admits the Board of Directors met as alleged and voted in favor of Ordinance No. 1, purporting to call an election for the purposes alleged, but denies each and every other allegation and inference contained in this particular paragraph. The only evidence we intend at the present time to introduce is the transcript of the election proceedings, and I think then the question will become merely one of law.

Paragraph VII of the Second Cause of Action alleges that the election was carried on according to law; that the notice of election contained the initiative ordinance and the contract, and that sample ballots were mailed, polling cards were mailed, and the proposed ordinance also was mailed, being contained in the contract. It was mailed

out to all the voters. There is no denial to this particular paragraph.

[fols. 798-99] Paragraph VIII alleges that the election was held on November 22, 1949, and in accordance with law as to the procedure. The original answer of August 18, 1950, contained no denial of this allegation. And in this regard, Mr. Reporter, at the beginning I think I said that answer was dated August 18, 1951. That was an error; it should have been 1950. However, the amended answer, dated January 2, 1951, alleges that the election was not noticed or carried on as required by Water Code Sections 31153, 23223 and 23224, and by the stipulation amending that answer further this morning, there is also the question of whether the election complied with Sections 31157, 31407 and 31391 of that same Water Code. I think that presents a legal question entirely, after the introduction of our election transcript.

The ninth and last paragraph alleges that on November 28, 1949, the vote was canvassed by the Board of Directors and the statement of votes cast was computed—made by the Board of Directors, showing 738 Aye votes and 197 No votes. The answer admits the Board of Directors met as alleged and canvassed the election returns and declared the results of the votes cast in the numbers alleged in the complaint, but denies every other allegation and inference and conclusion to be drawn.

Now, the Third Cause of Action deals with Goleta, and the allegations of the Third Cause of Action and the answer [fol. 800] thereto are the same.

The Fourth Cause of Action deals with the Montecito County Water District, and the allegations are similar. The denials are similar.

The Fifth Cause of Action deals with the Summerland County Water District. The complaint is identical, I believe, except for changes in name, and the answer presents the same issues.

The Sixth Cause of Action deals with the City of Santa Barbara, and the allegations are similar in the complaint, except they have a little different procedure in the City for who shall sign the contracts. The answer is also the same and presents the same issues as to the City, except that no defense is made that the City had to comply with these Water Code election provisions, which are contained in the amended answer. Now, that, briefly, is my view of the case, your Honor. I think Mr. Anderson also wanted to stipulate as to the defendants, and, as I understand, each one of the defendants whom Mr. Anderson and Mr. Butcher now represent, now is and, continuously, ever since the Agency has been purported to have been created, has been a voter of the Water Agency, an owner of real and personal property in the Agency, a taxpayer within the Agency, and has paid the taxes that have been levied,—and was there any other status?

Mr. Anderson: And a resident.

[fol. 801] Mr. Parma: And has been a resident in that regard. I take it that most of these people have been residents here at least as long as I have been living. Mr. Anderson also wanted me to stipulate, I believe, that the—I am willing to stipulate that the Santa Barbara County Water Agency itself has made no application and has taken no steps to either purchase or condemn by eminent domain or appropriate water in the Santa Ynez——

Mr. Anderson: Any water or water rights.

Mr. Parma: (Continuing) Water or water rights in the Santa Ynez River watershed, or elsewhere, except for whatever rights may have vested under this contract. He wanted me to stipulate, and I am also willing to stipulate, that the United States of America has not acquired any water or any water rights in the Santa Ynez Valley, except to the extent of whatever rights, if any, may be vested or possibly vested or subject to further vesting by the filing of an application before the Division of Water Resources some time ago, which application has been merely filed and noticed, and that thereafter, I believe somewhat in excess of 45 protests have been filed against that application. The matter is still pending. It has not been

heard by the Division of Water Resources, and the State has taken no steps to confirm any water rights of any sort in the Bureau of Reclamation.

Mr. Anderson: And that neither the Agency nor the [fol. 802] United States of America has acquired any water or water rights with which to furnish the member units water under the contracts alleged in plaintiff's complaint.

Mr. Parma: Yes, except whatever water rights may eventually vest, if any,——

Mr. Anderson: Pursuant to the application.

Mr. Parma: (Continuing)—pursuant to the application.

Mr. Butcher: Is that stipulated to, Mr. Parma?

Mr. Parma: That is stipulated to. There is a record on it; I don't think we have to make a formal stipulation.

Mr. Butcher: You mentioned the word "voter." It is stipulated that they were residents and qualified voters under the laws of the State of California.

Mr. Parma: Yes.

Mr. Anderson: And as contemplated by the Santa Barbara County Water Agency Act. The expression used in the Act is "elector" rather than "voter." I don't think it makes any difference.

Mr. Parma: That is so stipulated. In other words, they are all proper defendants. I would like to offer as Plaintiff's Exhibit No. 1 a certified copy, a copy certified to by Mr. Lewis, the County Clerk, of the report of the California District Securities Commission on the proposed so-called master contract. I take it counsel will have no objection.

Mr. Anderson: No objection.

[fol. 803] Mr. Parma: As Plaintiff's Exhibit No. 2, I would like to introduce Resolution No. 10 of the Santa Barbara County Water Agency, which authorizes the execution of the various member unit contracts. If counsel wants to enter a stipulation to that effect, I will stipulate that all those offers are made subject to all objections you wish to make regarding any constitutional question or legal question.

Mr. Anderson: Yes, we accept that stipulation.

Mr. Parma: So that you won't have to put it in the record every time I make an offer. I would next like to offer in evidence, which would be Plaintiff's Exhibit No. 3, the Santa Barbara City Clerk's transcript as to the proceedings in the Santa Barbara City election of November 22, 1949, and I have heretofore handed counsel a copy of the exhibits. I would next like to offer in evidence, as Plaintiff's Exhibit No. 4, the transcript of the election proceedings in the Carpinteria County Water District, certified to by the secretary there.

Mr. Butcher: Election proceedings?

Mr. Parma: Election proceedings.

Mr. Butcher: Just a minute, now. Go ahead.

Mr. Parma: (Continuing) In the Carpinteria County Water District, concerning the election of November 22, 1949.

The Court: All right.

(The above-referred-to exhibits were thereupon received in evidence and marked Plaintiff's Exhibits Nos. 1 to 4, [fol. 804] respectively.)

Mr. Anderson: My understanding is that all of these exhibits are going in subject to our objections as to their materiality or competency or relevancy?

Mr. Parma: Yes.

Mr. Butcher: And our motion to strike may be reserved?

Mr. Parma: Yes.

Mr. Butcher: What district was that?

Mr. Parma: That was Carpinteria,—Plaintiff's No. 4. Next is Plaintiff's Exhibit No. 5, a similar transcript of the election proceedings of Goleta County Water District, with reference to the election of November 22, 1949, subject to the same stipulation.

Mr. Butcher: That would be Plaintiff's No.——

Mr. Parma: No. 5. That is Goleta.

(The transcript was thereupon received in evidence and marked Plaintiff's Exhibit No. 5.)

Mr. Parma: I will now offer in evidence as Plaintiff's Exhibit No. 6 a similar transcript, certified to by the Secre-

tary of the Montecito Water District, concerning the November 22, 1949, election proceedings in the Montecito County Water District.

The Court: That will be Plaintiff's Exhibit No. 6, if there is no objection.

(The transcript was thereupon received in evidence and marked Plaintiff's Exhibit No. 6.)

[fol. 805] Mr. Parma: And I would like to introduce as Plaintiff's Exhibit No. 7 the transcript of the election proceedings in Summerland County Water District, concerning the November 22, 1949, election, which is certified to by the Secretary of that district.

The Clerk: Your Honor, may the Clerk mark all these exhibits accepted by the Court?

The Court: Yes, mark them. How do you want them marked?

The Clerk: They have been offered numerically, beginning with Plaintiff's 1.

The Court: All right, proceed, and they will be marked appropriately. They are all received and they will be marked appropriately.

Mr. Parma: And as Plaintiff's Exhibit No. 8, I would like to introduce my file copy of a letter to Mr. Richard Boke, dated October 24, 1949, requesting that the member unit contracts be approved by the Secretary of the Interior, and the letter of November 23, 1949, in reply thereto, signed by William E. Warren, Assistant Secretary of the Interior, giving the United States Bureau of Reclamation's approval to the form of the member unit contracts, together with the envelope in which I received it.

Mr. Butcher: Are you offering both of them as one exhibit?

Mr. Parma: Yes, I have got them clipped together. That [fol. 806] will be Plaintiff's No. 8.

Mr. Butcher: No. 8, is it?

Mr. Parma: Yes.

(The letters were thereupon received in evidence and marked, collectively, Plaintiff's Exhibit No. 8.)

The Court: Everything offered here will be received, unless there is an objection. If there is an objection, I will rule on the objection.

Mr. Anderson: Your Honor, it has been stipulated that the objections of the defendant may be deemed to have been made to all of these exhibits, so that we won't have to make objections as to each one.

Mr. Butcher: On the grounds that they are incompetent, irrelevant and immaterial, present no issues, and on all other conceivable grounds.

The Court: All right. That is the stipulation, is it? You haven't made that stipulation in open court this morning, have you?

Mr. Butcher: Yes.

Mr. Anderson: Yes.

Mr. Parma: I don't know as I would go so far as to say every conceivable ground.

The Court: Well, if they have been objected to, the objection in each instance is overruled.

Mr. Parma: Yes, that stipulation is correct, Mr. Butcher. [fol. 807] Mr. Butcher: Your Honor, may we have a brief recess?

The Court: Yes.

(Thereupon a short recess was taken.)

The Court: All right.

Mr. Parma: At this time, your Honor, I offer in evidence as Plaintiff's Exhibit No. 9 a certified copy of Resolution No. 13, authorizing the institution of this lawsuit.

The Court: All right.

(Thereupon the document was received in evidence and marked Plaintiff's Exhibit No. 9.)

Mr. Parma: Mr. Anderson, that stipulation we made about the water rights, of course, was subject to the same stipulation that we have, that it is merely for the facts, and we reserve our objections to the admissibility and other objections as to the competency, and so forth:

Mr. Anderson: Yes.

Mr. Parma: At this time, your Honor, as Plaintiff's Exhibit No. 10, I would like to offer in evidence all the

records and proceedings of this Court in Action No. 37417, entitled Santa Barbara County Water Agency against the State of California and all persons and property owners, and so forth. That was the original suit.

The Court: Is that the action that was filed before Judge Drapeau?

Mr. Parma: Yes, Judge Drapeau. It was filed on October [fol. 808] 2, 1945, after the Agency was formed, and judgment was entered on February 14, 1946.

Mr. Anderson: May I have that case number again?

Mr. Parma: That is 37417.

The Court: All right, it will be received. That is deemed to be objected to, is it?

Mr. Anderson: Yes, your Honor.

The Court: All right. The objection is overruled.

(The documents were thereupon received in evidence and marked, collectively, Plaintiff's Exhibit No. 10.)

Mr. Parma: Now, I believe, your Honor, that that is all the evidence and all the exhibits that I have at this time. At this time the plaintiff will rest.

Mr. Anderson: While I appreciate that the Court will take judicial notice of House Document 587 of the 80th Congress, Second Session, I would like to have it filed as an exhibit in this case, so that it would be more readily accessible to the Court.

The Court: All right, go ahead and file it.

Mr. Parma: No objection.

Mr. Anderson: That will be Defendants' Exhibit A, will it, your Honor?

The Court: All right.

Mr. Anderson: I might say that I do not consider it necessary to offer in evidence the entire document, but I wish to offer only the first portion thereof, ending with [fol. 809] page 47 of the document, being the portion that has to do with this Cachuma unit.

The Court: Well, I guess that is all right. Is there any objection to that, Mr. Parma?

Mr. Parma: I think the Court can take judicial notice of it, but I think the whole thing ought to go in.

The Court: You think the whole thing should go in, do you?

Mr. Parma: Yes. I will offer the whole thing as Plaintiff's Exhibit No. 11.

The Court: They are only offering a part of it and you are offering the rest of it?

Mr. Parma: Yes.

The Court: Let it all go in. The Court can take judicial notice, I think, of all of it.

Mr. Butcher: Well, we only offer it for the convenience of the Court.

The Court: Yes, I know. I understand that.

Mr. Butcher: So that if we refer to it in the argument or points and authorities, your Honor will have it available.

The Court: Yes.

(House Document 587 of the 80th Congress, Second Session, was thereupon received in evidence and marked Defendants' Exhibit A.)

Mr. Parma: I guess it can be stipulated the Judge can take that with him?

[fol. 810] Mr. Butcher: Yes.

Mr. Parma: And it won't be necessary to put it in the Clerk's records.

Mr. Anderson: We have no further evidence to introduce at this time.

The Court: I take it Mr. Anderson didn't have any particular objection to it, anyway. He didn't want to encumber the record; that was his idea, I think.

Mr. Anderson: That was it exactly. We have no further evidence to offer at this time. If the Court pleases, there are some new questions presented by our answer, as we discussed this morning. There are those Water Code sections, and we have a few other points which we would like to urge to your Honor by way of filing a written memorandum of points and authorities. We don't propose to cover the constitutional grounds that have been argued heretofore, nor to impose upon the Court's time in those connections, but as to the matters, we would like to have at least 20 days within which to file a written memorandum of points and authorities on behalf of the defendants.

The Court: What about your defense, that the lands that you represent receive no benefits?

Mr. Anderson: Well, those are questions which we argued before, and, of course, we do not recede from our earlier position in connection with that contention, and we would be happy to review briefly the nature of our [fol. 811] argument as to those considerations, if it will help your Honor in any way.

The Court: Well, I don't think it would make any difference. I went into that matter very thoroughly,—at least, I thought I did. I tried to. But I haven't any objection to your reenforcing your argument, if you want to, or repeating it, even. That is all right with me, if you want to do it.

Mr. Anderson: Well, only in a brief manner, your Honor. We don't think that we ought to impose upon your Honor's good nature too greatly, because this has had very thorough consideration in many of the points heretofore. Do you have any objection to our having 30 days within which to file a written——

Mr. Parma: I have no objection, counsel, to your taking as long as you deem necessary. I would like 20 days to reply, if necessary.

Mr. Anderson: That is agreeable.

Mr. Parma: But don't hurry yourselves.

Mr. Anderson: May we have 30 days, your Honor, and if we can get it finished within that period of time, why, we shall do so?

The Court: Within 30 days do you propose to file the first memorandum or brief?

Mr. Anderson: Yes.

Mr. Parma: That is satisfactory.

[fol. 812] The Court: You are the defendant, but you will file the first one, anyway; is that the idea? And will you answer the plaintiff's, or will there just be two,—yours and then their answer?

Mr. Anderson: Well, these are matters which we are urging more or less in an affirmative fashion. I have no objection to Mr. Parma filing an opening brief, if he desires to.

The Court: That is all right with me. I don't care.

Mr. Parma: I would suggest that Mr. Anderson's pro-

cedure be followed, that he have 30 days or more to file, if he requires it, and I have a similar time; and then if you want——

The Court: You want 30 days, and then you want 30 days to reply?

Mr. Parma: Yes, your Honor.

The Court: That is all right with me.

[fol. 816] [File endorsement omitted]

[fol. 817] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

L. A. No. 22761

THE SANTA BARBARA COUNTY WATER AGENCY, created by the laws of the State of California, Plaintiff and Appellant,

v.

ALL PERSONS AND PARTIES WHO HAVE ANY INTEREST IN OR WHO ARE INTERESTED IN OR TO BE INTERESTED IN OR CLAIM TO HAVE ANY INTEREST IN: THAT CERTAIN CONTRACT DATED SEPTEMBER 12, 1949, BY AND BETWEEN THE SANTA BARBARA COUNTY WATER AGENCY AND THE UNITED STATES OF AMERICA, ETC., ET AL., Defendants,

and

MAURICE A. BALAAM, TED R. HOLDEN, WILLIAM C. SUDDEN, W. G. MOORE, R. E. SUDDEN, CHARLES E. SUDDEN and L. H. CRANDALL, Defendants and Appellees.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed March 11, 1957

I. Notice is hereby given that The Santa Barbara County Water Agency, created by the laws of the State of California, the Appellant above named, hereby appeals to the Supreme Court of the United States from that portion [fol. 818] of the final judgment of the Supreme Court of the State of California filed and entered in this *in rem* action

on January 24, 1957, reversing that portion of the judgment of the trial court, i.e., the Superior Court of the State of California in and for the County of Santa Barbara, which Superior Court judgment had declared valid the following contracts: (1) a contract executed September 12, 1949, by the United States of America and The Santa Barbara County Water Agency entitled "Contract For The Furnishing of Water To Member Units of The Santa Barbara County Water Agency", Contract Symbol and Number 175r-1802; (2) a contract between The Santa Barbara County Water Agency and the Carpinteria County Water District, dated September 12, 1949, entitled "Contract For The Furnishing Of Water To The Carpinteria County Water District"; (3) a contract between The Santa Barbara County Water Agency and the Goleta County Water District dated September 12, 1949, entitled "Contract For The Furnishing Of Water To The Goleta County Water District"; (4) a contract between The Santa Barbara County Water Agency and the Montecito County Water District dated September 12, 1949, entitled "Contract For The Furnishing Of Water To The Montecito County Water District"; (5) a contract between The Santa Barbara County Water Agency and the Summerland County Water District dated December 8, 1949, entitled "Contract For The Furnishing Of Water To The Summer-[fol. 819] land County Water District"; (6) a contract between The Santa Barbara County Water Agency and the City of Santa Barbara, a municipal corporation, dated September 12, 1949, entitled "Contract For The Furnishing Of Water To The City of Santa Barbara".

This appeal is taken pursuant to Title 28 U.S.C.A. sec. 1257(1).

II. The Clerk of the Supreme Court of the State of California will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. The record consisting of Clerks' Trans.—3 Vols., Reporters Trans.—1 Vol. heretofore filed with the Supreme Court of the State of California on the appeal to said Court.

2. The opinion in this proceeding filed January 24, 1957, including the opinion filed on said date in *The Ivanhoe Irrigation District, Plaintiff and Appellants, vs. All Parties and Persons, Etc., Respondents* (L. A. No. 23043 and the opinion filed on said date in *Madera Irrigation District, Plaintiff and Appellants; vs. All Parties and Persons, Etc., Respondents* (Sacramento No. 6489).

3. The petition of the Santa Barbara County Water [fol. 820] Agency for a rehearing filed herein, the answers thereto and all the *amicus curiae* briefs filed in support thereof or opposition thereto, and the answers to such *amicus curiae* briefs, and the order of the Supreme Court of the State of California of February 19, 1957 denying a rehearing.

4. This Notice of Appeal.

III. The questions presented by this appeal all relate to the validity of the previously identified contract between the United States and The Santa Barbara County Water Agency, an agency of the State of California, providing for delivery of a water supply to the Agency and its Member Units from the Federal Cachuma Unit of the Santa Barbara County, California, Project for municipal and irrigation purposes for a period of 40 years at specified rates per acre foot of water delivered, which contract was executed pursuant to the Federal reclamation laws and includes the excess land provisions of said laws; and to the validity of the contracts of the Agency with its Member Units, being the hereinabove specified City and County Water Districts, for the furnishing of a water supply to them for municipal and irrigation purposes, which latter contracts also include the excess land provisions of the Federal reclamation laws.

[fol. 821] These questions are as follows:

1. Section 46 of the *Omnibus Adjustment Act* of 1926 (44 Stat. 649 (1926), 43 U.S.C. sec. 423e (1952)) precludes delivery of water from Federal reclamation projects to land held in private ownership by any one owner in excess of 160 irrigable acres unless certain conditions are met.

(a) Does this section apply only to public lands of the United States or does it also apply to lands in private ownership?

(b) Is this section valid or does it deprive owners of more than 160 acres of land in Federal reclamation projects in California of property without due process of law, and does it deny them equal protection of the laws?

(c) The California *Irrigation District Federal Cooperation Law* (Calif. Water Code secs. 23175 *et seq.*) provides for the delivery and distribution of water acquired under any contract with the United States "under the relevant acts of Congress" (*id.* sec. 23197(a)), and "in accordance [fol. 822] with the applicable acts of Congress" (*id.* sec. 23200). Is this section 46, one of the "relevant" and "applicable" acts of Congress referred to in the California *Irrigation District Federal Cooperation Law?*

(d) Does the application of this section 46 depend in any way on whether "the title to the water to be purveyed [is or] is not an unlimited title in the United States?"

(e) Does section 8 of the *Reclamation Act of 1902* (32 Stats. 390 (1902), 43 U.S.C. secs. 372, 383) require the United States to deliver water in accordance with a trust under state law, assuming such trust would prevent the imposition of the limitation in this section 46?

2. Does the validity of the contract involve consideration of the water rights of anyone and particularly of the United States?

3. Is the United States a party to this proceeding?

4. If the United States is not a party, did the courts of California have jurisdiction to determine:

(a) What water rights or title the United States has acquired?

[fol. 823] (b) What sort of water rights the United States could acquire in California, whether from the State of California or from others?

5. Can a trust imposed on water rights pursuant to State law prevent the United States from acquiring the water rights it needs to accomplish a Federal purpose?

6. Are the rights of the beneficiaries under the trust declared to exist by the California Supreme Court property rights within the meaning of the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution?

7. Assuming the rights referred to in paragraph 8 are property rights within the meaning of the United States Constitution, does the 160 acre water limitation in section 46 of the *Omnibus Adjustment Act of 1926* deprive the owners thereof of those rights?

8. Does Federal law provide that upon repayment the Agency must be granted title to "works for the storage and distribution of water to and by the agency" . . . "not dependent on a future and necessarily discretionary act of Congress"?

[fol. 824] 9. Does Federal law require that the contract specify an obligation for construction of storage and delivery works (other than local distribution systems for the use of individual districts) to be repaid in 40 years?

10. Does section 8 of the *Reclamation Act of 1902* submit the United States to the provisions of the State law regulating public utilities where Congress by sections *9(c) and 9(e) of the Reclamation Project Act of 1939* has provided a system of regulation for Federal projects which may be inconsistent with the State system?

11. Sections 9(c) and 9(e) of the *Reclamation Project Act of 1939* (53 Stat. 1196 (1939), 43 U.S.C. secs. 485h(c), 485h(e) 1952)) authorize the Secretary of the Interior to enter into contracts to furnish water for

irrigation and municipal purposes from Federal reclamation projects. The term of such contracts is not to exceed forty years.

(a) Does this section authorize the United States at its discretion to discontinue water service at the end of the contract term?

(b) If it does, does it impose upon landowners a [fol. 825] burden "under which they may suffer the loss of water rights at the discretion of the United States" and is therefore "contrary to well established constitutional principles and protections"?

Vern B. Thomas, District Attorney of the County of Santa Barbara, State of California, Lawrence M. Parma, Deputy District Attorney of the County of Santa Barbara, State of California, By Lawrence M. Parma, Attorneys for The Santa Barbara County Water Agency, created by the laws of the State of California, Appellants, 15 West Carrillo Street, P. O. Box 1288, Santa Barbara, California.

[fol. 826] Proof of Service (omitted in printing).

[fol. 827] SUPREME COURT OF THE UNITED STATES

Nos. 122, 123, 124, and 125, October Term, 1957

THE IVANHOE IRRIGATION DISTRICT and the STATE OF CALIFORNIA, Appellants,

v.

COURTNEY McCRACKEN et al.; THE MADERA IRRIGATION DISTRICT and the STATE OF CALIFORNIA, Appellants,

v.

CARL F. STEINER et al.; THE MADERA IRRIGATION DISTRICT, Appellant,

v.

PHILLIP and JANE E. ALBONICO; and THE SANTA BARBARA COUNTY WATER AGENCY, Appellant,

v.

MAURICE A. BALAAM et al.

Appeals from the Supreme Court of the State of California.

ORDER POSTPONING JURISDICTION—October 14, 1957

The statement of jurisdiction in these cases having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the cases on the merits. The cases are consolidated and a total of two hours allowed for oral argument.

October 14, 1957

Office - Supreme Court, U.S.
FILED
MAY 13 1957
JOHN T. FEY, Clerk

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1956

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7121—125

Nos. ~~993-996~~

THE IVANHOE IRRIGATION DISTRICT,
vs. *Plaintiff and Appellant,*
ALL PARTIES AND PERSONS, etc.,
Defendants,
THE STATE OF CALIFORNIA,
Defendant and Appellant,
COURTNEY McCRACKEN,
Defendant and Appellee.

THE MADERA IRRIGATION DISTRICT,
vs. *Plaintiff and Appellant,*
ALL PERSONS, etc.,
Defendants,
THE STATE OF CALIFORNIA,
Defendant and Appellant,
CARL F. STEINER, et al.,
Defendants and Appellees.

PHILLIP and JANE E. ALBONICO,
vs. *Plaintiffs and Appellees,*
THE MADERA IRRIGATION DISTRICT,
Defendant and Appellant,

THE SANTA BARBARA COUNTY WATER AGENCY,
vs. *Plaintiff and Appellant,*
ALL PARTIES AND PERSONS, etc.,
Defendants,
MAURICE A. BALAAM, et al.,
Defendants and Appellees.

No. .....

No. .....

No. .....

No. .....

On Appeal from the Supreme Court of California.

JURISDICTIONAL STATEMENT.

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Table of Contents

	Page
Table of Authorities Cited	ii
Introduction	1
Opinions Below	2
Jurisdiction	3
Statutes Involved	5
Questions Presented	6
Statement of the Cases:	
The Ivanhoe Case	11
The Madera Case	14
The Albonico Case	15
The Santa Barbara Case	16
How the Federal Questions Were Presented	18
A. Validity of the 160 Acre Water Limitation	19
B. Validity of Provision Respecting Title to Works	22
C. Validity of Provisions for Water Delivery and Payment	23
The Questions Are Substantial:	
A. Validity of the 160 Acre Water Limitation	24
B. Validity of the Provisions for Water Delivery and Payment	30
C. Validity of Provisions Respecting Title to Works	33
The Decisions Are Not Based on Any Adequate Non-Federal Ground	34
Conclusion	37

(The Appendix is printed as a separate volume.)

Table of Authorities Cited

Cases	Pages
Alabama v. Texas, 347 U.S. 272 (1954)	33
Albonico v. Madera Irr. Dist., 47 Adv. Cal. 698, 306 P.2d 894 (1957)	2
California v. Deseret Water &c. Co., 243 U.S. 415 (1917)	26, 35
Charleston Federal Savings & Loan Assn. v. Alderson, 324 U.S. 182 (1945)	19
Flournoy v. Wiener, 321 U.S. 253 (1944)	5, 26
Gin S. Chow v. City of Santa Barbara, 217 Cal. 573, 22 P.2d 5 (1933)	28
Ivanhoe Irr. Dist. v. All Parties, 47 Adv. Cal. 603, 306 P.2d 824 (1957)	2
Madera Irr. Dist. v. All Persons, 47 Adv. Cal. 685, 306 P.2d 886 (1957)	2
Middle Rio Grande W.U. Assn. v. Middle Rio Grande C.D., 57 N.M. 287, 258 P.2d 391 (1953)	27, 28
Nebraska v. Wyoming, 325 U.S. 589 (1945)	30
In re Owl Creek Irr. Dist., 71 Wyo. 30, 253 P.2d 867 (1953)	27
Santa Barbara County Water Agency v. All Persons, 47 Adv. Cal. 701, 306 P.2d 875 (1957)	2
Standard Oil Co. v. Johnson, 316 U.S. 481 (1942)	36
Stanley v. Schwalby, 147 U.S. 508 (1893)	26, 35
Stanley v. Schwalby, 162 U.S. 255 (1896)	26, 35
Steward Machine Co. v. Davis, 301 U.S. 548 (1937)	28
United States v. Allegheny County, 322 U.S. 174 (1944)	29
United States v. Carmack, 329 U.S. 230 (1946)	30
United States v. Gerlach Live Stock Co., 339 U.S. 725 (1950)	30

Pages

Whitfield v. Ohio, 297 U.S. 431 (1936) 19

Wickard v. Fillburn, 317 U.S. 111 (1942) 28

Wilson v. Cook, 327 U.S. 474 (1946) 19

Wissner v. Wissner, 338 U.S. 655 (1950) 5, 26, 35

United States Statutes By Name

Act of August 26, 1937, §2, 50 Stat. 850 (1937) 5, 11, 29

Omnibus Adjustment Act of 1926 §46, 44 Stat. 649 (1926), 43 U.S.C. §423e (1952) 4, 5, 6, 9, 13, 17, 19, 21, 22, 25

Public Law No. 643, 84th Cong., 2d Sess., 70 Stat. 483 (1956), 43 U.S.C.A. §485h-1 (1956 Supp.) 6, 31, 33

Reclamation Act of 1902,

§5, 32 Stat. 388 (1902), 43 U.S.C. §431 (1952) 5, 24

§6, 32 Stat. 389 (1902), 43 U.S.C. §498 (1952) 5, 34

§8, 32 Stat. 390 (1902), 43 U.S.C. §§ 372, 383 (1952) 5, 8, 9, 10, 21, 24, 30, 32, 33, 36

Reclamation Project Act of 1939,

§9(c), 53 Stat. 1194 (1939), 43 U.S.C. §485h (c) (1952) ..... 6, 10, 17, 23, 31 n. 11

§9(d), 53 Stat. 1195 (1939), 43 U.S.C. §485h (d) (1952) 6, 11-12, 32

§9(e), 53 Stat. 1196 (1939), 43 U.S.C. §485h (e) (1952) 6, 9, 23, 30, 31, 32, 37

United States Statutes

32 Stat. 388 (1902), 43 U.S.C. §431 (1952) 5

32 Stat. 389 (1902), 43 U.S.C. §498 (1952) 5, 34

32 Stat. 390 (1902), 43 U.S.C. §§ 372, 383 (1952) 5

36 Stat. 925, 926 (1911), 43 U.S.C. §§ 523, 524 (1952) 25

37 Stat. 265, 266 (1912), 43 U.S.C. §544 (1952) 25

38 Stat. 686, 689 (1914), 43 U.S.C. §418 (1952) 25

44 Stat. 649 (1926), 43 U.S.C. §423e (1952) 4, 5

	Pages
50 Stat. 850 (1937)	5, 29
53 Stat. 1194 (1939), 43 U.S.C. §485h (c) (1952)	6
53 Stat. 1195 (1939), 43 U.S.C. §485h (d) (1952)	6
53 Stat. 1196 (1939), 43 U.S.C. §485h (e) (1952)	6
66 Stat. 282 (1952)	25
68 Stat. 1190 (1954)	25
70 Stat. 483 (1956), 43 U.S.C.A. §485h-1 (1956 Supp.)	6

United States Code

28 U.S.C. (1952):	
§1257 (1)	5
43 U.S.C. (1952):	
§372	5
§383	5
§418	25
§423e	4, 5
§431	5
§485h (c)	6
§485h (d)	6
§485h (e)	6
§498	5, 34
§523	25
§524	25
§544	25
43 U.S.C.A. (1956 Supp.):	
§485h-1	6

California Statutes By Name

Irrigation District Federal Cooperation Law, Calif. Water Code, §§ 23175 *et seq.*:	
§§ 23175-23197	6, 7
§ 23197 (a)	7, 19
§ 23200	6, 19, 22, 35
§ 23225	3, 6, 13

Pages

The Santa Barbara County Water Agency Act, Calif. Stats. 1945, c. 1501, p. 2780, as amended by Calif. Stats. 1949, c. 12, p. 18, 1 Deering's Calif. Water Code Ann. (1954), Act 7303 ..... 4, 6, 7
§ 6, Calif. Stats. 1945, c. 1501, p. 2787 ..... 7, 18, 23
§ 6.3, Calif. Stats. 1949, c. 12, p. 24 ..... 7, 18, 23
§ 11.10, Calif. Stats. 1945, c. 1501, pp. 2797-2798 ..... 4, 18

California Statutes Other Than Codes

Calif. Stats. 1945, c. 1501, p. 2787 ..... 19, 23
Calif. Stats. 1945, c. 1501, p. 2797 ..... 4, 18
Calif. Stats. 1945, c. 1501, pp. 2797-2798 .....
Calif. Stats. 1949, c. 12, p. 18 4
Calif. Stats. 1956, 1st Extra Sess., c. 52 ..... 13 n. 1

California Water Code

§ 154 ..... 13 n. 1
§ 22250 ..... 6, 21, 35
§§ 22670-22684 ..... 3, 6
§§ 23175-23197 6
§ 23195 23
§ 23196 23
§ 23197(a) 7, 19
§ 23200 ..... 6, 19, 22, 35
§ 23225 ..... 3, 6, 13

Congressional Materials

H. R. Doc. No. 146, 80th Cong., 1st Sess. (1947) 31
H. R. Doc. No. 587, 80th Cong., 2d Sess. (1948) 17, 31
Sen. Rep. No. 2241, 84th Cong., 2d Sess. (1956) 32

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1956

THE IVANHOE IRRIGATION DISTRICT, vs. *Plaintiff and Appellant,* ALL PARTIES AND PERSONS, etc., *Defendants,* THE STATE OF CALIFORNIA, *Defendant and Appellant,* COURTNEY McCRACKEN, *Defendant and Appellee.*	No. .....
THE MADERA IRRIGATION DISTRICT, vs. *Plaintiff and Appellant,* ALL PERSONS, etc., *Defendants,* THE STATE OF CALIFORNIA, *Defendant and Appellant,* CARL F. STEINER, et al., *Defendants and Appellees.*	No. .....
PHILLIP and JANE E. ALBONICO, vs. *Plaintiffs and Appellees,* THE MADERA IRRIGATION DISTRICT, *Defendant and Appellant,*	No. .....
THE SANTA BARBARA COUNTY WATER AGENCY, vs. *Plaintiff and Appellant,* ALL PARTIES AND PERSONS, etc., *Defendants,* MAURICE A. BALAAM, et al., *Defendants and Appellees.*	No. .....

On Appeal from the Supreme Court of California.

JURISDICTIONAL STATEMENT.

INTRODUCTION.

Appellants appeal from four companion decisions of th
California Supreme Court holding invalid certain contract

between public agencies of the State of California and between three of these agencies and the United States. This statement is submitted to show that the Supreme Court of the United States has jurisdiction of these appeals and that substantial questions are presented. Since the questions involved in these appeals are closely related, this single jurisdictional statement has been prepared to cover all four cases as authorized in Rule 15 (3) of the Rules of the Supreme Court of the United States.

OPINIONS BELOW.

The opinions of the California Supreme Court in these four cases are reported as follows:

Ivanhoe Irr. Dist. v. All Parties, 47 Advance Cal. 603, 306 P. 2d 824;

Madera Irr. Dist. v. All Persons, 47 Advance Cal. 685, 306 P. 2d 886;

Albonico v. Madera Irr. Dist., 47 Advance Cal. 698, 306 P. 2d 894;

Santa Barbara County Water Agency v. All Persons, 47 Advance Cal. 701, 306 P. 2d 875.

For convenience these cases are hereinafter referred to as the *"Ivanhoe"*, *"Madera"*, *"Albonico"* and *"Santa Barbara"* cases respectively. In the first three cases the trial courts wrote opinions which have not been reported. The opinions and judgment in each case are included as appendices to this statement as follows:

Ivanhoe Case

California Supreme Court opinion	Appendix A-1
Trial court opinion	Appendix A-2
Trial court judgment	Appendix A-3

Madera Case

California Supreme Court opinion	Appendix B-1
Trial court opinion	Appendix B-2
Trial court judgment	Appendix B-3

Albonico Case

California Supreme Court opinion	Appendix C-1
Trial court opinion	Appendix C-2
Trial court judgment	Appendix C-3

Santa Barbara Case

California Supreme Court opinion	Appendix D-1
Trial court judgment	Appendix D-2

All the appendices to this jurisdictional statement are printed in a separate volume filed herewith. The volume of appendices is paged separately from this volume of the text of the jurisdictional statement, and will be cited "Appendix p. ——."

JURISDICTION.

The *Ivanhoe* case was brought by the Ivanhoe Irrigation District under California Water Code sections 23225 (Appendix J, Appendix p. 252) and 22670-22684 (Appendix M, Appendix pp. 258-260) to secure judicial validation of a contract with the United States providing for water service to the district from the Central Valley Project, a federal reclamation project in California, and for construction

of a distribution system within the district's boundaries. Such judicial validation is required by section 46 of the *Omnibus Adjustment Act of 1926* (44 Stat. 649 (1926), 43 U.S.C. § 423e (1952), Appendix F, Appendix p. 237). The decision of the Supreme Court of California was filed January 24, 1957; and rehearing was denied by that Court on February 19, 1957. Notice of appeal was filed on April 23, 1957.

The *Madera* case was brought by the Madera Irrigation District under the same statutory authorization as the *Ivanhoe* case to secure validation of a similar contract with the United States. The dates of the filing of the decision and the denial of rehearing by the California Supreme Court were the same as in the *Ivanhoe* case. Notice of appeal was filed on March 11, 1957.

The *Alborico* case was brought by a married couple owning land within the Madera Irrigation District for a writ of mandate under California Code of Civil Procedure section 1085 to compel exclusion of some of their land from the boundaries of the district. The dates of the filing of the decision and the denial of rehearing by the California Supreme Court were the same as in the *Ivanhoe* and *Madera* cases. Notice of appeal was filed on March 11, 1957.

The *Santa Barbara* case was brought by The Santa Barbara County Water Agency under section 11.10 of *The Santa Barbara County Water Agency Act* (Calif. Stats. 1945, c. 1501, pp. 2780, 2797, 1 Deering's Calif. Wat. Code, Ann., Act 7303, Appendix K, Appendix p. 254) to secure judicial validation of six contracts executed by the Agency. The first, the so-called "Master Contract", is between the United States and The Santa Barbara County Water

Agency and provides for water service to the Agency's member units from the Cachuma Project, a federal reclamation project in California. Each of the other five, the so-called "Member Unit Contracts", is between The Santa Barbara County Water Agency and other public bodies of the State of California and provides for delivery to those bodies of water received under the contract with the United States. The dates of the filing of the decision and the denial of rehearing by the California Supreme Court were the same as in the other three cases. Notice of appeal was filed on March 11, 1957.

The jurisdiction of the United States Supreme Court to review these four decisions by appeal is conferred by 28 U.S.C. section 1257 (1), and is sustained by the following decisions: *Wissner v. Wissner*, 338 U.S. 655, 656 (1950); *Flournoy v. Wiener*, 321 U.S. 253, 263 (1944).

STATUTES INVOLVED.

The statutes involved in these appeals are set forth as appendices to this statement as follows:

1. *Reclamation Act of 1902*, sections 5, 6, 8, 32 Stat. 388, 389, 390 (1902), 43 U.S.C. §§ 431, 498, 372, 383 (1952), Appendix E

2. Section 46 of the *Omnibus Adjustment Act of 1926*, 44 Stat. 649 (1926), 43 U.S.C. § 423e (1952). Appendix F

3. Section 2 of *Act of August 26, 1937*, 50 Stat. 850. Appendix G

4. Section 9 (c), (d), and (e) of the *Reclamation Project Act of 1939*, 53 Stat. 1194, 1195, 1196 (1939), 43 U.S.C. § 485h (c), (d), (e) 1952. Appendix H

5. Public Law No. 643, 84th Cong., 2d Sess., 70 Stat. 483 (1956), 43 U.S.C.A. § 485h—1 (1956 Supp.). Appendix I

6. *Irrigation District Federal Cooperation Law*, California Water Code Division 11, Part 6, Chapter 2, sections 23175-23197, 23200, 23225. Appendix J

7. *The Santa Barbara County Water Agency Act*, Calif. Stats. 1945, c. 1501, p. 2780, as amended by Calif. Stats. 1949, c. 12, p. 18, sections 6, 6.3, and 11.10, 1 Deering's California Water Code Ann. Act 7303. Appendix K

8. California Water Code section 22250. Appendix L

9. California Water Code sections 22670-22684. Appendix M

QUESTIONS PRESENTED.

Review of these decisions has been sought by way of appeal because the California Supreme Court has held, among other holdings, that certain federal statutes are unconstitutional.

The questions raised by these appeals which are common to all four cases are as follows:

1. Section 46 of the *Omnibus Adjustment Act of 1926* (Appendix F, Appendix pp. 237-238) precludes deliv-

ery of water from federal reclamation projects to land held in private ownership by any one owner in excess of 160 irrigable acres unless certain conditions are met.

(a) Does this section apply only to public lands of the United States or does it also apply to lands in private ownership?

(b) Is this section valid or does it deprive owners of more than 160 acres of land in federal reclamation projects in California of property without due process of law, and does it deny them equal protection of the laws?

(c) The California *Irrigation District Federal Cooperation Law* (Appendix J, Appendix, pp. 250-252 and *The Santa Barbara County Water Agency Act* (Appendix K, Appendix pp. 253-256) provide for the delivery and distribution of water acquired under any contract with the United States "under the relevant acts of Congress". (Calif. Wat. Code § 23197 (a), Appendix J, Appendix p. 251) and "in accordance with the applicable acts of Congress" (Calif. Wat. Code § 23200, Appendix J, Appendix p. 252; *The Santa Barbara County Water Agency Act*, § 6, see also § 6.3, Appendix K, Appendix pp. 253-254). Is this section 46 one of the "relevant" and "applicable" acts of Congress referred to in these California statutes?

(d) Does the application of this section 46 depend in any way on whether "the title to the water

to be purveyed is [or is] not an unlimited title in the United States" (Appendix A-1, Appendix p. 51).

(e) Does section 8 of the *Reclamation Act of 1902* (Appendix E, Appendix p. 236) require the United States to deliver water in accordance with a trust under state law, assuming such trust would prevent the imposition of the limitation in this section 46?

2. Does the validity of the contracts involve consideration of the water rights of anyone and particularly of the United States?

3. Is the United States a party to this proceeding?

4. If the United States is not a party, did the courts of California have jurisdiction to determine:

   a. What water rights or title the United States has acquired?

   b. What sort of water rights the United States could acquire in California, whether from the State of California or from others?

5. Can a trust imposed on water rights pursuant to State law prevent the United States from acquiring the water rights it needs to accomplish a federal purpose?

6. Are the rights of the beneficiaries under the trust declared to exist by the California Supreme Court property rights within the meaning of the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution?

7. Assuming the rights referred to in the preceding question are property rights within the meaning of the United States Constitution, does the 160 acre water limitation in section 46 of the *Omnibus Adjustment Act of 1926* (Appendix F, Appendix pp. 237-238) deprive the owners thereof of those rights?

Certain additional questions present in all the cases except the *Albonico* case are as follows:

8. Does federal law provide that upon repayment the districts contracting with the United States must be granted title to "works for the storage and distribution of water to and by the district" . . . "not dependent on a future and necessarily discretionary act of Congress" (Appendix A-1, Appendix p. 40)?

9. Does federal law require that the contracts with the United States specify an obligation for construction of storage and delivery works (other than local distribution systems for the use of individual districts) to be repaid in 40 years?

10. Does section 8 of the *Reclamation Act of 1902* (Appendix E, Appendix p. 236) submit the United States to the provisions of State law regulating public utilities where Congress by section 9 (e) of the *Reclamation Project Act of 1939* (Appendix H, Appendix p. 245) has provided a system of regulation for federal projects which may be inconsistent with the State system?

11. Section 9 (e) of the *Reclamation Project Act of 1939* (Appendix H, Appendix p. 245) authorizes the Secretary of the Interior to enter into contracts to furnish water for irrigation purposes from federal rec-

lamation projects. The term of such contracts is not to exceed forty years.

(a) Does this section authorize the United States at its discretion to discontinue water service at the end of the contract term?

(b) If it does, does it impose upon landowners a burden "under which they may suffer the loss of water rights at the discretion of the United States" so that it is "contrary to well established constitutional principles and protections". (Appendix A-1, Appendix p. 56)?

The remaining questions are present only in the *Santa Barbara* case, which alone involves contracts for the delivery of water for municipal water supply purposes. These questions are as follows:

12. Does section 8 of the *Reclamation Act of 1902* (Appendix E, Appendix p. 236) submit the United States to the provisions of State law regulating public utilities where Congress by section 9 (c) (2) of the *Reclamation Project Act of 1939* (Appendix H, Appendix p. 241) has provided a system of regulation for federal projects serving water for municipal water supply purposes which may be inconsistent with the State system?

13. Section 9 (c) (2) of the *Reclamation Project Act of 1939* (Appendix H, Appendix p. 241) authorizes the Secretary of the Interior to enter into contracts to furnish water for municipal water supply purposes from federal reclamation projects. The term of such contract is not to exceed forty years.

(a) Does this section authorize the United States at its discretion to discontinue water service at the end of the contract term?

(b) If it does, does it impose upon water users a burden "under which they may suffer the loss of water rights at the discretion of the United States" and is therefore "contrary to well established constitutional principles and protections" (Appendix A-1, Appendix p. 56)?

STATEMENT OF THE CASES.

The Ivanhoe Case.

On September 23, 1949, the appellant Ivanhoe Irrigation District, a public agency of the State of California, entered into a contract with the United States *(Ivanhoe* Cl. Tr., p. 14 *et ff.)*.

Part A of the contract *(Ivanhoe* Cl. Tr., pp. 21-31) is a "9 (e) contract" based on section 9 (e) of the *Reclamation Project Act of 1939* (Appendix H, Appendix p. 245). It provides for delivery by the United States of an irrigation water supply to the district for a period of forty years at specified rates per acre foot payable annually in advance of delivery. This water supply comes from the Central Valley Project, a federal reclamation project located in the Sacramento and San Joaquin Valleys of California *(Act of August 26, 1937*, § 2, 50 Stat. 850, Appendix G, Appendix pp. 239-240). There are no public lands of the United States within the district or within the project service area. Part B of the contract *(Ivanhoe* Cl. Tr., pp. 31-39) is a "9 (d) contract" based on section 9 (d) of the *Recla-*

mation Project Act of 1939 (Appendix H, Appendix pp. 243-245). It provides for expenditure by the United States of funds for construction of a system of works to distribute this water supply to the lands within the district and for repayment by the district, in forty equal annual installments without interest, of the amount spent.

Articles 34 through 36 of the contract (*Ivanhoe* Cl. Tr., pp. 43-48) contain the 160 acre water limitation on irrigation water delivery. Under these articles the district promises not to furnish water or service made available under the contract to more than 160 acres of irrigable land held by any one landowner in the district (320 acres for a husband and wife), unless the owner agrees to sell his "excess" land within 10 years at an appraised price which does not include any enhancement in value resulting from the existing or prospective possibility of securing project water or service. If the owner is willing to sell his excess land under these terms he may receive water delivered under the contract for all his land (Art. 36 (b) (i), *Ivanhoe* Cl. Tr., pp. 46-47). If he does not desire to sell his excess land he nevertheless may designate his non-excess land and be eligible for project water delivery to 160 or 320 acres, as the case may be (Art. 36 (b) (ii), *Ivanhoe* Cl. Tr., pp. 47-48). There is nothing in the contract prohibiting the owner from keeping his excess land and irrigating it with water pumped from the underground or acquired from any non-project surface supply.

Another article of the contract (Art. 33, *Ivanhoe* Cl. Tr., p. 43) provides that title to all of the project works, including the distribution system, shall remain in the United States until otherwise provided by Congress.

On October 31, 1949, the district brought this special proceeding in the Superior Court of the State of California in and for the County of Tulare to obtain a judicial determination of the validity of the contract. This is required by federal law (*Omnibus Adjustment Act of 1926*, § 46, Appendix F, Appendix p. 237) and article 42 of the contract (*Ivanhoe* Cl. Tr., p. 50), and is permitted by state law (Calif. Wat. Code § 23225, Appendix J, Appendix p. 252). The appellant State of California and the appellee Courtney McCracken, an owner of 309 acres of land in the district, separately demurred and then answered to the complaint, opposing validation of the contract on numerous grounds (*Ivanhoe* Cl. Tr., pp. 68-72, 100-143). The State of California later filed an amended answer asking for validation of the contract (*Ivanhoe* Cl. Tr., p. 155). Since then the State has supported the position of the district. The Water Project Authority of the State of California and the State Engineer of the State of California also appeared but took no position on the validity of the contract (*Ivanhoe* Cl. Tr., pp. 165, 192-203).[1]

On July 31, 1952, the Superior Court filed its opinion and order for findings (Appendix A-2, Appendix pp. 113-135). On February 27, 1953, the findings of fact and conclusions of law were signed (*Ivanhoe* Cl. Tr., pp. 237-315) and the judgment entered holding the contract invalid (Appendix A-3, Appendix pp. 136-138).

The district and the State of California appealed the case to the Supreme Court of the State of California

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[1]The Water Project Authority and the office of State Engineer have since been abolished (Calif. Stats. 1956, 1st Extra. Sess., c. 52, Calif. Wat. Code § 154).

(*Ivanhoe* Cl. Tr., pp. 322, 323). By a 4-3 decision, that Court on January 24, 1957, affirmed the Superior Court's judgment (Appendix A-1, Appendix pp. 1-64, 64-86, 86-112), and on February 19, 1957, denied rehearing.

The Madera Case.

On May 14, 1951, the appellant Madera Irrigation District, a public agency of the State of California, entered into a contract with the United States (*Madera* Cl. Tr., pp. 6-54). For purposes of this appeal, the contract is substantially identical to the contract in the *Ivanhoe* case. And, as in the *Ivanhoe* case, there are no public lands of the United States within the district.

On May 21, 1951, the district brought this proceeding for validation of the contract in the Superior Court of the State of California in and for Madera County under the same authority as the proceeding in the *Ivanhoe* case. Eighty-six owners of land in the district and four owners of land outside the district appeared in opposition to the contract by demurrer and then answer (*Madera* Cl. Tr., pp. 119, 155, 189, 237, 287, 335, 425). The State of California appeared and supported the validity of the contract (*Madera* Cl. Tr., pp. 79-118). As in the *Ivanhoe* case, the Water Project Authority of the State of California and the State Engineer of the State of California appeared but took no position on the contract's validity (*Madera* Cl. Tr., pp. 91, 378-394).

On August 20, 1952, the trial court filed its memorandum opinion directing the preparation of findings of fact and conclusions of law against the validity of the contract in accordance with the views expressed by the same judge in

the *Ivanhoe* trial court opinion (Appendix B-2, Appendix p. 156). The findings of fact and conclusions of law were filed on September 25, 1953 (*Madera* Cl. Tr., pp. 423-541), and judgment holding the contract invalid was entered on February 3, 1954 (Appendix B-3, Appendix pp. 157-179).

The district and the State of California appealed from the judgment of invalidity (*Madera* Supp. Cl. Tr., pp. 7, 11) while the State Engineer appealed from certain conclusions of law relating to the vesting of water rights (*Madera* Supp. Cl. Tr., pp. 1-3).

The Supreme Court of California, by a 4-3 decision filed January 24, 1957, modified and affirmed the judgment of invalidity "for reasons stated in the Ivanhoe case" (Appendix B-1, Appendix pp. 139-145) and on February 19, 1957, denied rehearing.

The Albonico Case

The appellees Phillip and Jane E. Albonico, on May 14, 1951, brought a petition for a writ of mandate in the Superior Court of the State of California in and for Madera County to compel the Board of Directors of the Madera Irrigation District to exclude from the district all their land in excess of 320 acres. Exclusion was sought on the ground that no benefit could be received by their land in excess of 320 acres because of the 160 acre water limitation provisions of the district's contract with the United States. This is the same contract in issue in the *Madera* case. The district board of directors had previously denied exclusion.

After rendering an opinion holding the 160 acre water limitation provisions of the contract unconstitutional as a

deprivation of property without due process of law and as a denial of equal protection of the laws (Appendix C-2, Appendix pp. 185-201); the trial court entered a judgment in the alternative (Appendix C-3, Appendix pp. 202-204). The first alternative was that if the district's plan of operation was to deliver water in compliance with the 160 acre water limitation provisions of the contract with the United States, a writ of mandate would issue compelling exclusion of the land. The second alternative was that if the district did not apply these water limitation provisions, the writ would be denied.

The district appealed from this judgment on March 26, 1952 (*Albonico* Cl. Tr., p. 37). The California Supreme Court on January 24, 1957, by a 4-3 decision, held the water limitation provisions inapplicable "in view of our decisions in *Ivanhoe* . . . and in *Madera* . . ." (Appendix C-1, Appendix pp. 180, 183). Accordingly, the first alternative of the trial court was stricken and the second affirmed under which the appellees were entitled to delivery of water for all their land (Appendix C-1, Appendix p. 183). Rehearing was denied on February 19, 1957.

The Santa Barbara Case.

On September 12, 1949, the appellant Santa Barbara County Water Agency, a public agency of the State of California, entered into a contract with the United States, commonly referred to as the "Master Contract" (*Santa Barbara* Cl. Tr., pp. 73-113). For purposes of this appeal, the contract is substantially identical to the Ivanhoe and Madera contracts with three exceptions. First, the water supply is to be delivered from the Cachuma Project, a federal reclamation project in Santa Barbara County, Cali-

fornia (H.R. Doc. No. 587, 80th Cong., 2d Sess. (1948)) rather than from the Central Valley Project. Second, the contract is for a water supply only and not for construction of a distribution system. Third, the contract provides for delivery of water for municipal water supply purposes, as authorized by section 9 (c) (2) of the *Reclamation Project Act of 1939* (Appendix H, Appendix p. 241), as well as for irrigation. As in the *Ivanhoe* and *Madera* cases, there is no public land of the United States within the area to be served with water.

Subsequently the Agency entered into five contracts, commonly called the "Member Unit Contracts," with five public bodies within its boundaries who actually deliver the water to the users. These bodies and the dates of execution of their contracts are: (1) City of Santa Barbara, November 29, 1949 (*Santa Barbara* Cl. Tr. pp. 129-175); (2) Carpinteria County Water District, December 7, 1949 (*Santa Barbara* Cl. Tr. pp. 221-271); (3) Goleta County Water District, December 1, 1949 (*Santa Barbara* Cl. Tr. pp. 319-368); (4) Summerland County Water District, December 8, 1949 (*Santa Barbara* Cl. Tr. pp. 507-558); and (5) Montecito County Water District, December 8, 1949 (*Santa Barbara* Cl. Tr. pp. 413-462). Each of these contracts contains the 160 acre water limitation as required by the Master Contract (*Santa Barbara* Cl. Tr. p. 109).

On February 8, 1950, this proceeding for judicial validation of all six contracts was brought by the Agency in the Superior Court of the State of California in and for Santa Barbara County. As in the *Ivanhoe* and *Madera* cases, this is required by section 46 of the *Omnibus Adjustment Act of 1926* (Appendix F, Appendix p. 237) and by the con-

tracts (*Santa Barbara* Cl. Tr. pp. 113, 174, 270, 367, 461, 557) and is permitted by state law (Calif. Stats. 1945, c. 1501, § 11.10, pp. 2780, 2797, Appendix K, Appendix pp. 254-256). Seven individuals appeared and opposed validation of the contracts in addition to challenging the legality of the formation of the agency. Their demurrers were overruled and ultimately the trial court held all six contracts valid (Appendix D-2, Appendix p. 226).

On appeal from this judgment by appellees, the California Supreme Court, in a decision filed on January 24, 1957, unanimously affirmed that portion of the trial court judgment upholding the legality of the formation of the Agency. But, by a 4-3 decision, the Court reversed the trial court and held the contracts invalid on the basis of the reasoning contained in the *Ivanhoe* and *Madera* decisions (Appendix D-1, Appendix p. 221). Rehearing was denied on February 19, 1957.

HOW THE FEDERAL QUESTIONS WERE PRESENTED.

The federal questions presented by these appeals all arise from the decisions of the California Supreme Court sought to be reviewed. That is, it was on the basis of its consideration and disposition of these federal questions that the California Supreme Court held the contracts invalid. In such a situation, where the federal questions were actually considered and decided by the highest court of the state, references to whether, how and when they were raised in the trial court are not necessary for the purpose of establishing the jurisdiction of the United States Supreme Court (*Wilson* v. *Cook*, 327 U.S. 474, 480

(1946); *Charleston Federal Saving & Loan Assn.* v. *Alderson*, 324 U.S. 182, 185-186 (1945); *Whitfield* v. *Ohio*, 297 U.S. 431, 435-436 (1936)).

Therefore, in the text which follows we will merely point out where these questions were considered by the California Supreme Court and how they were decided by that Court. References to the raising of the questions on the trial court level will, however, be set forth in footnotes to the text discussion in the event that such references are of interest. Where the same point was raised more than once in the same case only one or two references will be given.

A. Validity of the 160 Acre Water Limitation.

The majority of the California Supreme Court concluded that the 160 acre water limitation provisions in all the contracts are invalid. These provisions are required in the contract by the plain words of federal law, section 46 of the *Omnibus Adjustment Act of 1926* (Appendix F, Appendix pp. 237-238) and are properly includible under state law (Calif. Wat. Code §§ 23197 (a), 23200, Appendix J, Appendix pp. 251, 252; Calif. Stats. 1945, c. 1501, §§ 6, 6.3, pp. 2780, 2787, 2788, Appendix K, Appendix p. 253). The majority reached this conclusion of invalidity by the following holdings:

1. Section 46 of the *Omnibus Adjustment Act of 1926* "may be deemed to apply to public lands alone" (Appendix A-1, Appendix p. 50) and not to delivery of water to privately owned land.[2] This is because the intention of the

[2]Not raised on the trial court level.

Omnibus Adjustment Act of 1926, as shown by another section of that act, was the development of public lands of the United States, and because the act is included in Title 43 of the United States Code which, according to a survey by the majority, deals generally with public lands (Appendix A-1, Appendix p. 50).

2. If section 46 were construed as being applicable to the delivery of water to privately owned land, it would be unconstitutional as a deprivation of property without due process of law and a denial of equal protection of the laws (Appendix A-1, Appendix pp. 29-30, 32, 45, 47-49; Appendix B-1, Appendix p. 145; Appendix C-1, Appendix p. 183).[3] This is because:

a) Under California law, all the "domestic" water in the state is held in trust by the state for the benefit of all the people of the state (Appendix A-1, Appendix pp. 30, 32).

b) The equitable title of the beneficiaries of this trust, who are all the people of the state, is "an inchoate right" to use the water "subject to like enforcement and equal protection of the law," although the right is dependent on compliance with "reasonable terms and conditions" (Appendix A-1, Appendix pp. 31, 32).

c) Although the United States did not appear in these cases (Appendix A-1, Appendix pp. 3-4), it is concluded that the United States has not acquired and cannot acquire rights in this water except as limited by these beneficial rights owned by all the people of the state (Appendix A-1, Appendix pp. 31-32, 35, 45, 51).

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[3] *Ivanhoe* Cl. Tr. p. 71, lines 12-18, p. 140, lines 18-22; *Madera* Cl. Tr. p. 130, lines 1-8, p. 139, lines 6-16; *Albonico* Cl. Tr. p. 29, line 25-p. 30, line 10; *Santa Barbara* Cl. Tr. p. 60, lines 1-8.

d). The 160 acre water limitation on delivery of water through federal reclamation project facilities limits an owner of excess land in the use and enjoyment of this beneficial right owned by him "on the sole basis of the amount of property he owns" (Appendix A-1, Appendix p. 48). Such a basis of distinction is arbitrary and unreasonable and therefore constitutes a deprivation of such owner's property without due process of law and a denial of equal protection of the laws (Appendix A-1, Appendix pp. 47-49; Appendix B-1, Appendix p. 145).

3. As a matter of interpretation of federal law, section 8 of the *Reclamation Act of 1902* (Appendix E, Appendix p. 236) prevails over section 46 of the *Omnibus Adjustment Act of 1926* (Appendix F, Appendix pp. 237-238). Under this section 8, the United States must deliver water from a federal reclamation project in California ratably to owners of land within an irrigation district on the basis of the assessed valuation of their land as provided in California Water Code section 22250 (Appendix L, Appendix p. 257), even though this would be contrary to the express language of section 46 of the *Omnibus Adjustment Act of 1926* (Appendix A-1, Appendix pp. 33-35, 49-51).[4] The California Supreme Court apparently relied on this reasoning in invalidating the limitation in the Santa Barbara contracts without mentioning that there is no equivalent of Water Code section 22250 in the law governing the Santa Barbara County Water Agency or its member units.

4. The United States could apply the 160 acre water limitation provisions of section 46 of the *Omnibus Adjust-*

[4] Appendix A-2, Appendix p. 120; *Ivanhoe* Cl. Tr. p. 309, lines 7-8; *Madera* Cl. Tr. p. 534, lines 3-6, p. 536, lines 3-7.

ment Act of 1926 to privately owned land in California only if it could acquire an unlimited title in "domestic" water of the state, which it cannot do. (Appendix A-1, Appendix pp. 30-32, 35, 51-52).[5]

5. The 160 acre water limitation in section 46 of the *Omnibus Adjustment Act of 1926* is not "applicable" federal law within the meaning of California Water Code section 23200 (Appendix J, Appendix p. 252), which provides that under contracts such as those in question water "shall be distributed and apportioned by the district in accordance with the applicable acts of Congress, the rules and regulations of the Secretary of the Interior thereunder, and the provisions of the contract" (Appendix A-1, Appendix p. 51).[6]

B. Validity of Provision Respecting Title to Works.

The majority of the Court also held invalid as a matter of federal law the article found in each district's contract with the United States providing that title to all of the project works, including the distribution system, shall remain in the United States until otherwise provided by Congress (Appendix A-1, Appendix pp. 39-40). This was based on the belief that such a provision "is contrary to the debtor-creditor relationship existing between the United States and the district" and that the district is entitled, on final repayment, to a conveyance of "works for the storage and distribution of water to and by the district . . . not dependent on a future and necessarily discretion-

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[5]Appendix A-2, Appendix pp. 130-131; *Ivanhoe* Cl. Tr. p. 296, line 21-p. 297, line 11; *Madera* Cl. Tr. p. 519, line 5-p. 520, line 3.

[6]Not raised on the trial court level.

ary act of Congress" (Appendix A-1, Appendix pp. 39-40, 63-64).[7]

C. Validity of the Provisions for Water Delivery and Payment.

Finally, the majority concluded that the provisions of the contracts with the United States relating to delivery and payment for a water supply are illegal, although they are faithfully based on sections 9 (c) (2) and 9 (e) of the *Reclamation Project Act of 1939* (Appendix H, Appendix pp. 241, 245) and are authorized by state law (Calif. Wat. Code §§ 23195, 23196, Appendix J, Appendix p. 251; Calif. Stats. 1945, c. 1501, §§ 6, 6.3, pp. 2780, 2787, 2788, Appendix K, Appendix pp. 253-254). The Court did not discuss the legality of the municipal water supply provisions of the Santa Barbara contract, but inferentially its views on 9 (e) seem to apply equally to 9 (c) (2). This conclusion was predicated in the following holdings:

1. Applicable federal law requires that a water supply contract between the United States and an irrigation district specify a specific amount of money, to be repaid by the district in 40 years, as the district's obligation for repayment of the cost of construction of all storage and delivery works serving it, which these contracts do not do (Appendix A-1, Appendix pp. 38-39, 52; Appendix B-1, Appendix p. 145).[8]

2. The water delivery provisions of the contract, by implication or otherwise, purport to grant to the United States the right to distribute water to consumers at a price without compliance with the laws of California relating to the regulation and control of public utilities in the

[7]Not raised on the trial court level.

[8]*Ivanhoe* Cl. Tr. p. 137, lines 11-20.

distribution of the State's domestic water; this is in conflict with controlling federal law, section 8 of the *Reclamation Act of 1902* (Appendix E, Appendix p. 236), which requires the United States to comply with such laws of California (Appendix A-1, Appendix pp. 54-56, 59, 64; Appendix B-1, Appendix p. 145).[9]

3. To the extent that the water delivery provisions of the contract, by implication or otherwise, reserve to the United States the right at its discretion to discontinue water service at the end of the contract term, those provisions are "contrary to well established constitutional principles and protections" (Appendix A-1, Appendix pp. 56-64; Appendix B-1, Appendix p. 145).[10]

THE QUESTIONS ARE SUBSTANTIAL.

A. Validity of the 160 Acre Water Limitation.

1. In invalidating the 160 acre water limitation provisions of the contracts in issue, the California Supreme Court has held unconstitutional a restriction on water delivery to privately owned land from federal reclamation projects which, in one form or another, has been a cornerstone of federal reclamation law since the original *Reclamation Act of 1902*. Section 5 of that Act (Appendix E, Appendix p. 235), provides in part that, "No right to the use of water for land in private ownership shall be sold for a tract exceeding 160 acres to any one landowner. . . ." The justification for such a restriction has always been that irrigation water deliveries through federal reclama-

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[9] *Ivanhoe* Cl. Tr. p. 310, lines 9-18.

[10] *Ivanhoe* Cl. Tr. p. 138, lines 2-5; *Ivanhoe* Cl. Tr. p. 311, lines 3-5; *Madera* Cl. Tr. p. 537, lines 11-26.

tion projects are subsidized by the people of the whole country because the irrigators pay back only a fraction of the cost of the facilities serving them, and the subsidy should be widely distributed instead of concentrated in the hands of a few large landowners (see Chief Justice Gibson's dissenting opinion in the *Ivanhoe* case, Appendix A-1, Appendix pp. 78-80).

Subsequent additions to the reclamation law changed the mechanics of this water limitation, but maintained the principle intact (*e.g.* 36 Stat. 925, 926 (1911), 43 U.S.C. §§ 523, 524 (1952); 37 Stat. 265, 266 (1912), 43 U.S.C. § 544 (1952); 38 Stat. 686, 689 (1914), 43 U.S.C. § 418 (1952)). Section 46 of the *Omnibus Adjustment Act of 1926* (Appendix F, Appendix pp. 237-238), on which the 160 acre water limitation provisions in these contracts are based, is the latest such restriction of general applicability. It or one of the earlier provisions controls irrigation water delivery to privately owned land from every reclamation project in the 17 western reclamation states, except those few projects which by statute have either been subjected to special limitations (*e.g.* San Luis Valley Project, Colorado, 66 Stat. 282 (1952)) or have been expressly exempted (*e.g.* Santa Maria Project, California, 68 Stat. 1190 (1954)).

In holding the 160 acre water limitation invalid, these decisions of the California Court therefore have a reverberating impact on the entire federal reclamation program (*e.g.* see letter from six California Congressmen to Attorney General of California, Appendix to Petition for Rehearing by State of California in the *Ivanhoe* case, p. 1). A judgment by the highest court of a state that a statute

of the United States is invalid is, of course, subject to the appeal jurisdiction of the United States Supreme Court (*Wissner* v. *Wissner*, 338 U.S. 655, 656 (1950); *Flournoy* v. *Wiener*, 321 U.S. 253, 263 (1944).

2. This issue of the constitutionality of the limitation is unavoidable despite the attempt of the California Supreme Court to construe section 46 as applying to public land alone (Appendix A-1, Appendix p. 50). A simple reading of the section demonstrates beyond the shadow of a doubt that it imposes the 160 acre limitation on water delivery to privately owned land. It plainly says that:

> "Such contract or contracts with irrigation districts hereinbefore referred to shall further provide that all irrigable land held in private ownership by any one owner in excess of one hundred and sixty irrigable acres shall be appraised in a manner to be prescribed by the Secretary of the Interior . . .; and that no such excess land so held shall receive water from any project or division if the owners thereof shall refuse to execute valid recordable contracts for the sale of such lands. . . ."

The correct interpretation of this federal statute is, of course a federal question (*California* v. *Deseret Water &c. Co.*, 243 U.S. 415, 417 (1917); *Stanley* v. *Schwalby*, 162 U.S. 255, 278-279 (1896); *Stanley* v. *Schwalby*, 147 U.S. 508, 519 (1893)).

3. There is a current conflict of decision as to the constitutionality of the 160 acre water limitation among the highest courts of three of the western states. The Supreme Court of the United States, however, has never considered the question.

The constitutionality of the limitation was upheld in the last appellate decision on the subject immediately preceding the cases now sought to be reviewed (*Middle Rio Grande W.U. Assn.* v. *Middle Rio Grande C.D.*, 57 N.M. 287, 302, 311, 258 P.2d. 391, 400, 406 (1953)). A few months prior to *Middle Rio Grande*, the Supreme Court of Wyoming, in a self-acknowledged dictum, said that it believed the limitation to be unconstitutional (*In re Owl Creek Irr. Dist.*, 71 Wyo. 30, 61 *et ff.*, 68, 253 P.2d. 867, 879 *et ff.*, 882 (1953)). The decisions now appealed appear to be the first cases actually holding the limitation unconstitutional.

4. Each specific federal question involved in the conclusion reached by the California Court that the limitation is unconstitutional is of obvious significance to the entire west.

Two of the holdings are that this restriction, imposed by federal law on the furnishing of water from storage and delivery works financed, constructed, owned and operated by the federal government, takes from owners of excess land without due process inchoate beneficial rights which all persons in the state share in the water of the state (Appendix A-1, Appendix pp. 44-45), and by so doing also denies them equal protection of the laws (Appendix A-1, Appendix pp. 31-32). These holdings affect every one of the seventeen western reclamation states.

All of these states subscribe to the principle relied on by the California Court that unused water within the borders of the state is available for appropriation and use by the people of the state. If this principle gives rise to a property right which is taken without due process by the operation of the 160 acre water limitation on federal recla-

mation project deliveries in California, the same result would seem to follow in every other western state.

Further, if the restrictions on delivery of water required by federal law deny equal protection of the laws in California, they deny equal protection in all of the other reclamation states regardless of what theories such states may follow as to property rights in water.

In *Middle Rio Grande W.U. Assn.* v. *Middle Rio Grande C.D.*, 57 N.M. 287, 311, 258 P. 2d. 391, 406 (1953) (*supra* par. 3), the court held compliance with the limitation a valid exercise of the state's police power. This reasoning was ignored in the cases now appealed, although in one of its own landmark decisions the California Supreme Court held that a vested property right in water is as much subject to restriction under the police power as any other property right (*Gin S. Chow* v. *City of Santa Barbara*, 217 Cal. 573, 700-703, 22 P. 2d. 5, 16-17 (1933)).

The cases now appealed also disregard the legal consequences of the facts that the United States owns the delivery works and is subsidizing a large portion of the costs of making the water available. If these facts had been considered in the light of the principles declared by this Court in *Wickard* v. *Fillburn*, 317 U.S. 111, 133 (1942), and *Steward Machine Co.* v. *Davis*, 301 U.S. 548, 584-585 (1937), it would be clear: (1) that the owners of excess land are merely seeking to get all the United States has to give without doing what the United States asks in return, and to deprive them of this hope of benefit does not violate due process or equal protection; and (2) that the effort here is to deny the state and the United States the power to condition equitably the receipt of governmental bounty.

Further, analysis of the rights under the "trust" declared by these decisions shows these rights to be so evanescent that it is doubtful if they are property at all within the meaning of the Constitution. The only affirmative incident of the "trust" seems to be that it precludes application of the limitation. Under these circumstances it is submitted that the characterization of the "trust" rights as property not only is not binding on this Court, but should be rejected (*United States* v. *Allegheny County*, 322 U.S. 174, 184 (1944)).

5. Another of the holdings of the California Court involved in the conclusion that the limitation is unconstitutional is that the United States lacks the power to acquire the kind of unlimited title in water rights in California which the Court believes must be owned to enable the United States to apply the limitation. This holding renders ineffective the direction of Congress in authorizing the Central Valley Project (*Act of August 26, 1937*, § 2, 50 Stat. 850 (1937), Appendix G, Appendix pp. 239-240):

1. "That except as herein otherwise specifically provided, the provisions of the reclamation law, as amended, shall govern . . . the construction, operation and maintenance of the [Central Valley Project]; and

2. "[That] the Secretary of the Interior . . . may acquire by proceedings in eminent domain, or otherwise, all lands, rights of way, water rights, and other property necessary for said purposes."

If correct, the holding would render equally ineffective the authority granted by Congress to secure needed property rights for other reclamation projects. The fact that the

California Court held that the water rights are held by the State in trust, rather than absolutely (Appendix A-1, Appendix pp. 30-31) is not a valid basis for limiting the power of the federal government to acquire such water rights (*United States* v. *Carmack*, 329 U.S. 230, 239 (1946)).

6. Similarly, the holding that the general language of section 8 of the *Reclamation Act of 1902* compels the United States to obey state law irrespective of later, more specific requirements of federal law (Appendix A-1, Appendix pp. 49-50), if correct, would subject the whole body of federal reclamation law enacted since 1902 to nullification by contrary state law. Not only is this holding unsupported by the decision of *United States* v. *Gerlach Live Stock Co.*, 339 U.S. 725 (1950), which was cited as authority by the California Court (Appendix A-1, Appendix p. 51), but it is directly contradicted by the interpretation of section 8 in *Nebraska* v. *Wyoming*, 325 U.S. 589, 615 (1945): "We do not suggest that where Congress has provided a system of regulation for federal projects it must give way before an inconsistent state system."

B. Validity of the Provisions for Water Delivery and Payment.

1. In both the Central Valley Project and the Cachuma Project the recovery of reimbursable construction costs of the project irrigation facilities (other than local distribution systems) has been predicated upon the use of water service contracts authorized by section 9 (e) of the *Reclamation Project Act of 1939* (Appendix H, Appendix p. 245). Recovery of the construction costs of the municipal water supply features of the Cachuma Project was antici-

pated under similar water service contracts authorized by section 9 (c) (2) of the same Act (Appendix H, Appendix p. 241). This is made clear in the official cost allocation reports for these two projects (H.R. Doc. No. 146, 80th Cong., 1st Sess. (1947), pp. 9-10, 20; H.R. Doc. No. 587, 80th Cong., 2nd Sess. (1948), p. 33). Under 9 (c) (2) and 9 (e) contracts, the maximum term for which is forty years, water is furnished at specified rates designed to include an appropriate share of the operation and maintenance cost of the project and of the project's fixed charges. However, project construction costs need not be returned by the water users within the forty year maximum contract period. This is made particularly clear as to 9 (e) in section 1 (2) of the 1956 act supplementing section 9 (e) (Appendix I, Appendix pp. 246-249). The water rates included in the contracts for these two projects are actually based on a recovery period greater than forty years.

Each of the three contracts with the United States in issue in these cases contains irrigation water delivery provisions in strict accordance with section 9 (e) and the Santa Barbara contract's municipal water supply provisions are based on section 9 (c) (2).

Although the majority opinion of the California Court on the legality of the 9 (e) contract is somewhat ambiguous, the Court apparently forbids the use of such contracts as being illegal under federal law.[11] Instead of such contracts, the Court seems to require contracts under which each contracting district agrees to pay a specific amount of

[11]Since the Court's views on the 9(e) contract are inferentially applicable to municipal water supply contracts under section 9(c)(2), the discussion hereinafter on 9(e) applies also to 9(c)(2) (see pp. 21-23 herein).

money within forty years as its obligation for repayment of its share of the cost of construction of all project facilities serving it (Appendix A-1, Appendix pp. 63-64). In other words, the Court has read out of the law section 9 (e) of the *Reclamation Project Act of 1939* and its recent supplement (Appendix I, Appendix pp. 246-249) in favor of the mandatory use of 9 (d) contracts (§ 9 (d) of the *Reclamation Project Act of 1939*, Appendix H, Appendix pp. 242-245).

Little argument is needed to show that the correctness of this ruling is a matter of major importance in every reclamation project where 9 (e) contracts have been used or are contemplated. In California alone as of 1955 twenty-seven 9 (e) contracts had been entered into; nine more were in force in five states in the Missouri River Basin (Sen. Rep. No. 2241, 84th Cong., 2d. Sess. (1956), pp. 2, 6). Moreover, all the contracting districts have a heavy financial stake in the legality of the 9 (e) contract, for if they must repay their share of project construction costs within forty years instead of the longer recovery period permitted under 9 (e), their annual cost of water may be significantly increased.

2. A further ground of invalidity of the 9 (e) contract relied on by the California Court is that it is violative of section 8 of the *Reclamation Act of 1902* (Appendix E, Appendix p. 236) because it fails to conform to the laws of California regulating public utility operation (Appendix A-1, Appendix pp. 55-56). Involved in this holding are three important questions of federal law: (1) Whether the United States, when acting under a 9 (e) contract, is operating as a public utility; (2) whether such operation is in

conflict with state law; and, (3) if so, whether section 8 of the *Reclamation Act of 1902* compels compliance with state law notwithstanding that section 9 (e) provides otherwise.

3. Finally, the California Court apparently believes that the validity of these contracts depends on whether water service will be continued at the expiration of the forty year term of their water delivery provisions (Appendix A-1, Appendix pp. 56, 64). If this belief is correct, it is important to the administration of the federal reclamation program that the question of the proper construction and constitutionality of the section 9 (e) and its 1956 supplement (Appendix I, Appendix pp. 246-249) with respect to continuance of water delivery after forty years be definitively answered by the United States Supreme Court.

C. Validity of Provision Respecting Title to Works.

The California Supreme Court held that upon repayment of its obligation each contracting district has the right to a conveyance from the United States of title to the storage and distribution works serving it "'not dependent on a future and necessarily discretionary act of Congress,'" and that the contracts are defective in stating that title to all project works shall remain in the United States until otherwise provided by Congress (Appendix A-1, Appendix pp. 39-40, 64). The effect of these conclusions is to deprive Congress of the exclusive control over federal property which decisions of the United States Supreme Court have uniformly held it possesses (*Alabama v. Texas*, 347 U.S. 272 (1954), and cases cited therein.) A holding of this kind that fails to cite any federal statute either ex-

pressing or implying such an obligation to convey, and that ignores the one relevant statute forbidding conveyance without Congressional consent *(Reclamation Act of 1902,* § 6, 32 Stat. 389 (1902), 43 U.S.C. § 498 (1952), Appendix E, Appendix p. 235), would seem to warrant United States Supreme Court review even if no other issue were involved in these cases.

THE DECISIONS ARE NOT BASED ON ANY ADEQUATE NON-FEDERAL GROUND.

The California Supreme Court construed California law in the course of deciding these four cases. But it is plain from the Court's opinions that even the majority did not believe there to be any non-federal ground or grounds adequate to support the decisions without its rulings on the federal questions.

Much of the main opinion, in the *Ivanhoe* case, is devoted to a development of a trust theory regarding the ownership of the "domestic" water of California. The Court held that under California law every person within the state is a beneficiary of a trust in which the state as trustee owns all the domestic water of the state. But two further holdings were needed to reach the conclusion that the 160 acre water limitation provisions of the contract are invalid: (1) The holding that the limitation contained in federal law takes away without due process the interests of those beneficiaries who own more than 160 acres of land and therefore denies them equal protection of the

laws (Appendix A-1, Appendix p. 47). (2) The holding that the United States is inhibited by federal law from acquiring the kind of rights which would enable it to apply the limitation in California (Appendix A-1, Appendix pp. 33-35). Whether federal statute is unconstitutional is obviously a federal question (*Wissner* v. *Wissner*, 338 U.S. 655, 656 (1950)). And so is the question whether statutes of the United States authorize the Secretary of the Interior to acquire the property necessary to accomplish a federal purpose (*California* v. *Deseret Water &c. Co.*, 243 U.S. 415, 417 (1917); *Stanley* v. *Schwalby*, 162 U.S. 255, 278-279 (1896); *Stanley* v. *Schwalby*, 147 U.S. 508, 519 (1893)).

The Court held also that California Water Code section 22250 (Appendix L, Appendix p. 257) compels both the contracting districts and the United States to deliver water from federal reclamation projects to landowners in accordance with the assessed value of their land, a formula at variance with the 160 acre water limitation (Appendix A-1, Appendix pp. 46-47).[12] Obviously, it is a federal question whether the United States must comply with this provision of state law.

But, as to the duty of the districts, the Court later refers (Appendix A-1, Appendix p. 51) to another section of the California Water Code, section 23200 (Appendix J, Appendix p. 252), which applies specifically to

[12]The California Court apparently regarded this California Water Code section equally controlling in the *Santa Barbara* case as in the *Ivanhoe* and *Madera* cases, although the section relates to irrigation districts and no similar provision can be found in the law governing the Santa Barbara County Water Agency or its member units.

the apportionment by a district of water received under a contract with the United States. That section provides that water so received "shall be distributed and apportioned by the district in accordance with the applicable acts of Congress, the rules and regulations of the Secretary of the Interior thereunder, and the provisions of the contract." The reason given by the Court for deciding that this language does not authorize California districts to apply the limitation is that the section speaks of "applicable" federal law and in its view the 160 acre water limitation is inapplicable (Appendix A-1, Appendix pp. 50-51).

The California Court regards the limitation as not applicable federal law on the theory that the United States cannot secure the kind of unlimited title in water rights which the Court feels must be possessed to empower the government to apply the limitation, and hence the limitation unconstitutionally deprives owners of excess land of their beneficial rights in the domestic water of the State and improperly discriminates against them. Thus, we are referred back to the federal questions of the constitutionality of the federal statute containing the 160 acre water limitation and the power of the United States to acquire water rights. When interpretation of a state statute involves a question of federal law, such interpretation itself becomes a federal question (*Standard Oil Co.* v. *Johnson*, 316 U.S. 481, 483 (1942)).

California law regulating public utility operation was adverted to by the California Supreme Court in its discussion about the forty year water delivery provisions of the contracts with the United States. The Court stated that if, as to those provisions, the contracts were deemed to be

other than for the repayment of a specified sum in forty years, they would be violative of all the laws of California respecting the regulation and control of public utilities in the state (Appendix A-1, Appendix pp. 55-56, 58-59, 64; Appendix B-1, Appendix p. 145). The reason given by the Court for the relevancy of California public utility law was that section 8 of the *Reclamation Act of 1902*, in directing compliance with state law relating to water used in irrigation, "controls the operations of the Department of the Interior so far as federal law is concerned" and makes state law governing public utilities applicable to the United States (Appendix A-1, Appendix pp. 55-56). Thus, here too the basic question is a federal question. That question is, assuming that the kind of water delivery arrangements authorized by section 9 (e) of the *Reclamation Project Act of 1939* are contrary to state public utility law, whether as a matter of federal law section 9 (e) is superseded in favor of such state requirements. Of course, even the premise that section 9 (e) violates state public utility law is open to United States Supreme Court review because the validity of a federal statute is being denied. In this regard, note that the California Court has failed to cite the California laws governing public utilities which it had in mind or to explain in what way the water delivery provisions of the contract by-pass them.

CONCLUSION.

It is submitted that the decisions in these four cases by the California Supreme Court misinterpret, misapply, and erroneously invalidate key provisions of federal reclama-

tion law, and gravely affect the administration of the entire federal reclamation program. We believe that the federal questions presented by this appeal are substantial and that they are of public importance.

Dated: May 6, 1957.

Respectfully submitted,

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In the Supreme Court

OF THE

United States

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SUPREME COURT, U.S.

OCTOBER TERM, 1956

Nos. ~~9, 3-996~~ 122 - 125

THE IVANHOE IRRIGATION DISTRICT,
vs. *Plaintiff and Appellant,*
ALL PARTIES AND PERSONS, etc.,
Defendants,
THE STATE OF CALIFORNIA,
Defendant and Appellant,
COURTNEY MCCRACKEN,
Defendant and Appellee.

No. _____

THE MADERA IRRIGATION DISTRICT,
vs. *Plaintiff and Appellant,*
ALL PERSONS, etc.,
Defendants,
THE STATE OF CALIFORNIA,
Defendant and Appellant,
CARL F. STEINER, et al.,
Defendants and Appellees.

No. _____

PHILLIP and JANE E. ALBONICO,
vs. *Plaintiffs and Appellees,*
THE MADERA IRRIGATION DISTRICT,
Defendant and Appellant,

No. _____

THE SANTA BARBARA COUNTY WATER AGENCY,
vs. *Plaintiff and Appellant,*
ALL PARTIES AND PERSONS, etc.,
Defendants,
MAURICE A. BALAAM, et al.,
Defendants and Appellees.

No. _____

On Appeal from the Supreme Court of California.

APPENDICES TO JURISDICTIONAL STATEMENT.

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Table of Contents

		Page
Appendix A-1,	The Ivanhoe Irrigation District v. All Parties, etc., 47 A.C. 603, 306 P.2d 824 (1957):	
	Majority opinion	1
	Dissenting opinion of Gibson, C. J. and Traynor, J.	64
	Dissenting opinion of Carter, J.	86
Appendix A-2,	The Ivanhoe Irrigation District v. All Parties, etc. Memorandum of Decision (Superior Court, unreported)	113
Appendix A-3,	The Ivanhoe Irrigation District v. All Parties, etc., Judgment (Superior Court)	136
Appendix B-1,	Madera Irrigation District v. All Persons, etc., 47 A.C. 685, 306 P.2d 886 (1957)	139
Appendix B-2,	Madera Irrigation District v. All Persons, etc., Order for Findings (Superior Court)	156
Appendix B-3,	Madera Irrigation District v. All Persons, etc., Judgment (Superior Court)	157
Appendix C-1,	Albonico v. Madera Irrigation District, 47 A.C. 698, 306 P.2d 894 (1957)	180
Appendix C-2,	Albonico v. Madera Irrigation District, Memorandum Opinion (Superior Court, unreported)	185
Appendix C-3,	Albonico v. Madera Irrigation District, Judgment (Superior Court)	202
Appendix D-1,	The Santa Barbara County Water Agency v. All Persons, etc., 47 A.C. 701, 306 P.2d 875 (1957)	205
Appendix D-2,	The Santa Barbara County Water Agency v. All Persons, etc., Judgment (Superior Court)	226
Appendix E,	Reclamation Act of 1902, 32 Stat. 388:	
	§ 5	235
	§ 6	235
	§ 8	236
Appendix F,	Omnibus Adjustment Act of 1926, 44 Stat. 636:	
	§ 46	237
Appendix G,	Act of August 26, 1937, 50 Stat. 844:	
	§ 2	239

		Page
Appendix H,	Reclamation Project Act of 1939, 53 Stat. 1187:	
	§ 9(c)	241
	§ 9(d)	242
	§ 9(e)	245
Appendix I,	Act of July 2, 1956, 70 Stat. 483:	
	§ 1	246
	§§ 2-4	248
	§ 5	249
Appendix J,	California Irrigation District Federal Cooperation Law (Calif. Water Code, Div. 11, Part 6, Ch. 2):	
	§§ 23175-23179	250
	§§ 23195-23197	251
	§ 23200	252
	§ 23225	252
Appendix K,	The Santa Barbara County Water Agency Act, Calif. Stats. 1945, c. 1501, p. 2780, as amended Calif. Stats. 1949, c. 12, p. 24:	
	§ 6	253
	§ 6.3	253
	§ 11.10	254
Appendix L,	California Water Code, § 22250	257
Appendix M,	California Water Code, Div. 11, Part 5, Ch. 4:	
	§§ 22670-22675	258
	§§ 22676-22682	259
	§§ 22683-22684	260

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No. .....

On Appeal from the Supreme Court of California.

APPENDICES TO JURISDICTIONAL STATEMENT.

(Vol. 47 A.C. 603, 306 P. 2d 824.)

[L. A. No. 23043. In Bank. Jan. 24, 1957.]

THE IVANHOE IRRIGATION DISTRICT, Plaintiff and Appellant, v. ALL PARTIES AND PERSONS, etc., Defendants; COURTNEY McCRACKEN et al., Respondents; THE PEOPLE, Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Tulare County. Benjamin C. Jones, Judge.* Affirmed.

Proceeding by an irrigation district to obtain confirmation of a contract entered into by it with the United States, by which the United States undertook to deliver water from the Central Valley project to the district and to expend funds for the construction of a distribution system within the district. Judgment for objecting defendants, affirmed.

SHENK, J.—The plaintiff Ivanhoe Irrigation District and certain of the defendants appeal from a judgment refusing to confirm a proposed contract between the United States, [611]** acting by and through the Bureau of Reclamation of the Department of the Interior, and the district. The contract provides for the delivery of a supply of water for irrigation purposes from the Central Valley Project and for the construction of a distribution system to make the water available for beneficial use on the lands within the district.

*Assigned by Chairman of Judicial Council.

**Figures in [ ] refer to the pages of 47 Advance Cal.

On September 23, 1949, the plaintiff district, purporting to act under the Irrigation District Federal Cooperation Law (Wat. Code § 23175 et seq.), entered into the contract with the United States. As required by law the contract was approved by the California Districts Securities Commission, but with reservations (Wat. Code, §§ 23222 and 24253), and by the district's electors (Wat. Code, §§ 23220 et seq).

This proceeding was commenced by the district on October 31, 1949, in the Superior Court in and for the County of Tulare to have the contract confirmed. Confirmation is required by federal law (Omnibus Adjustment Act of 1926, § 46, 44 Stats. 649, 650, 43 U.S.C. § 423e (1946), Federal Reclamation Laws, Ann. 318-319), by section 42 of the contract and by the Water Code of the State of California (§ 22670 et eq., § 23225). It is a special proceeding in rem, and summons was by publication. It was brought against all persons having or claiming to have an interest in the formation of the plaintiff district and in the operation of the proposed contract and the lands affected thereby. It will fix the status of all property within the district lawfully affected by the contract and a final judgment will foreclose further inquiry into the matters to which the judgment properly relates. Within its pertinent issues it will be binding on the world at large. (Code Civ. Proc., § 1908; *Becher v. Contoure Laboratories*, 279 U.S. 388 [49 S.Ct. 356, 73 L.Ed. 752]; *Riley v. New York Trust Co.*, 315 U.S. 343 [62 S.Ct. 608, 86 L.Ed. 885]; see *Frenchman-Cambridge Irr. Dist. v. Ferguson*, 154 Neb. 20 [46 N.W.2d 692].) The judgment is limited to a determination of the validity of the contract. As necessarily incident

thereto questions relating to the title to and the control to be exercised over the unappropriated domestic waters of the state, to the distribution and sale of those waters by the district and to the ownership of the distributing system to be acquired by the district, will be considered.

Originally only two parties appeared as parties defendant, the first being the People of the State of California, acting by and through the attorney general. The other appearing defendant is Courtney McCracken, the owner of 309 acres of irrigable land within the district. He filed a demurrer [612] on December 13, 1949, and an answer on November 11, 1950. He is a bachelor and those provisions of the contract (§§ 34, 35 and 36) which would limit to a single person the ownership of no more than 160 acres of land entitled to the distribution of water, particularly are sought to be applied to him. He is a nonresident of the district and could not, under terms of the applicable law (Wat. Code, § 23220 et seq.) vote for or against approval of the contract. He opposes confirmation for numerous reasons but particularly on the ground that the 160-acre limitation hereinafter considered is not applicable and is invalid as to him and his property within the district.

A default was entered against everyone not appearing within the time specified in the published notice of service. The United States did not formally appear but caused the Regional Counsel and Assistant Regional Counsel of the Bureau of Reclamation of the Department of the Interior to request permission to appear as amici curiae. Objection to such an appearance was interposed by the then attorney general on the ground that the United States

was a party interested in the proceeding and should appear as such. The objection was overruled and the request granted. Federal counsel thus appeared and took part in the proceedings throughout the trial.

The State Engineer is Chief of the Division of Water Resources of the Department of Public Works and pursuant to law has exercised the duties imposed upon the Water Commission.[1] He did not appear prior to argument in the trial court, but at that time the court, on its own motion, set aside the default of the State Engineer and he appeared and filed an answer by his own counsel as he had the right to do. (Gov. Code, §§ 11040, 11041.) He stated that his interest in the proceeding was to protect the state water law from impairment, and that in the event the court saw fit to validate the contract he requested the court to confirm what he claimed to be established state law relating to the title of the state's water resources and regulations pertaining thereto. The particular relief which he seeks will be hereinafter noted.

Counsel for the Di Giorgio Fruit Corporation, the owner of large areas of irrigated and irrigable lands in the San Joaquin Valley in and out of the district, appeared as amici [613] curiae and participated in the trial in opposition to confirmation of the contract.

The petition sets forth the essential facts as a basis for the request for confirmation. The prayer is that the court examine and enquire into the proceedings for the organiza-

[1]Under the provisions of A.B. 4, ch. 52, 1956 First Extra Sess., effective July 5, 1956, these duties, with the exception of supervision of water distribution, were transferred to the new State Water Rights Board, and the new Director of the Department of Water Resources assumed the functions of the Water Resources Board.

tion of the district and the validity of the contract, and that a judgment be entered confirming those proceedings and the contract. A copy of the proposed contract is attached to the petition and made a part thereof.

On December 13, 1949, the attorney general filed a general and special demurrer on behalf of the state in which he attacked the validity of the contract sought to be confirmed. Before the demurrer was ruled upon and on November 8, 1950, he filed an answer reiterating as defensive matter the position taken in the demurrer, which was (1) that the proposed contract would be an unconstitutional delegation of the legislative power of California to Congress, to the Secretary of the Interior, and to the district, acting jointly; (2) that certain land limitation provisions of the Reclamation Laws which the contract purports to apply within the district are not applicable to the land within the district; (3) that the contract unconstitutionally deprives owners of excess land of property without due process of law; (4) that the Irrigation District Federal Cooperation Law of the State of California, under which the district purports to proceed, violates the Constitution and laws of the State of California requiring uniform operation of general laws and prohibiting special laws where general laws may be applicable, and (5) that the contract is not authorized by federal law.

The prayer of the state was that a judgment be entered that the plaintiff take nothing by the petition; that a declaration be made of the rights and duties among themselves of the State of California, the United States, the plaintiff District and the landowners therein with respect to the contract, and for all other proper relief.

On March 7, 1951, in open court, the attorney general sought leave to withdraw the original answer of the State of California and to file an amended answer. Permission was granted and the amended answer was filed on March 30, 1951, seeking the confirmation of the contract.

The filing of the amended answer occurred after conferences and correspondence between the state's representatives and the Secretary of the Interior. In his letter of March 5, 1951, the Secretary of the Interior stated that questions "with respect to the historical, present and future ownership of [614] water or water rights" would seem "to be immaterial to the question whether a particular contract for water service or for the construction of a distribution system, or both, is a valid one and to the question of the authority of the district to enter into it"; that he did not believe "that a finding that the contractual obligations are valid is determinative of the title of the water", and that the question "whether an individual water user, or a district may have a legal right to demand the continual delivery of project water after the expiration of the 40 year term of a water service clearly is not affected by a finding that the contract of itself is binding during its own express term."

In response to the letter of March 5, 1951, the attorney general replied, under date of March 22, 1951, that "It is my view that this contract is not intended to and does not deal with, determine, or settle any questions with respect to the historical, present or future claims of ownership of water or water rights that are now or may hereafter be urged by the United States, the State of California, the Ivanhoe Irrigation District, or individual or cor-

porate landowners or users of the water, the furnishing of which is provided for by the said contract."

To the letter of March 22, 1951, the Secretary of the Interior replied under date of March 27, 1951, in which he agreed with the attorney general that the ownership of water or water rights would not be affected by the contract or by the validation proceedings. He concluded that it would follow that water will be supplied pursuant to appropriations filed by the United States, appropriations filed by the state and assigned to the United States, and rights acquired by contract and otherwise from private individuals and corporations; that as to such water, the United States will contract only to furnish a supply and to be paid for services rendered; that the contracts will not and will not purport to affect the ownership of the water or rights thereto, and that the ownership of water or water rights by a water district or a landowner therein will be no different than had the supply been furnished by the Water Project Authority of the state.

Notwithstanding the foregoing the allegations of paragraphs VI and VIII of the original answer on behalf of the state and the same numbered paragraphs of the amended answer in effect remained the same. Paragraph VI of the amended answer alleges that the State of California, acting through its Department of Finance, pursuant to state law, previously filed with the Division of Water Resources of the Department [615] of Public Works of California certain applications for the appropriation of the unappropriated waters of the Sacramento and San Joaquin Rivers and their tributaries for the use and benefit of the Central Valley Project and the owners of

lands to be irrigated therefrom; that by assignments, made pursuant to statute, the State of California, again acting through its Department of Finance, assigned to the United States for the use and benefit of the Central Valley Project certain of these applications.

Paragraph VIII of the state's amended answer alleges that by virtue of the terms of the applications, the state has become and is the trustor of an express trust; that by the assignments the United States has become and is the trustee of that trust; that the landowners to be served from the works of the Central Valley Project, including the landowners of plaintiff district, have become and are the beneficiaries of that trust; that any and all claims or interests of the United States obtained by the proposed contract are held by the United States as such trustee as a part of a trust corpus or res for the use and benefit of the Central Valley Project and the landowners to be served water from the works of that project, and in particular the landowners of plaintiff District, that the State of California is entitled to be heard, among other things, as to all matters relating to the administration and execution of the trust by the United States and is entitled to require that the trustee administer the trust according to its true intent and meaning.

However in apparent furtherance of the understanding between the attorney general and the Secretary of the Interior it was alleged in paragraph XI of the amended answer that the validity of the contract "does not depend on whether the United States has rights to the water to be delivered by it pursuant to the contract or rights to the use thereof or title or ownership thereto; . . . that an

adjudication of such rights to water or the use thereof or title or ownership thereto is not appropriate in this proceeding, and that such an adjudication herein would be contrary to the best interests of the State and of the United States." Copies of correspondence between the Secretary of the Interior and the attorney general, including the letters above referred to, were attached as exhibits to the amended answer.

The prayer of the amended answer is "(1) that the district's legal capacity and authority to enter into the contract, the proceedings on the part of the district for the authorization of the execution of the contract, and the execution of [616] the contract between the Ivanhoe Irrigation District and the United States be confirmed and declared valid; and (2) that the decree in this proceeding recite that on the issues properly raised in this proceeding the decree is not required to and does not purport to be an adjudication of the right or interest of the State of California or of its agencies, including but not limited to the Ivanhoe Irrigation District and the Water Project Authority, or of the right or interest of the United States or its agencies, or all or any of the above, in or to the waters or water rights or respecting the regulation of the use thereof under the laws of the State of California, involved in the Central Valley Project.

"And Wherefore, the Water Project Authority which is not taking any position on the validity of the contract between the Ivanhoe Irrigation District and the United States, prays that the decree in this proceeding recite that on the issues properly raised in this proceeding the decree is not required to and does not purport to be an adjudica-

tion of the right or interest of the State of California or of its agencies including but not limited to the Ivanhoe Irrigation District and the Water Project Authority, or of the right or interest of the United States or its agencies, or any or all of the above, in or to the waters or water rights or respecting the regulation of the use thereof under the laws of the State of California, involved in the Central Valley Project."

On the day set for hearing, March 7, 1951, the court suggested that the district might be infringing upon the powers of the Water Project Authority of the State of California, and that the Authority might well be an active, indispensable party to the proceedings. Accordingly, the court set aside the default of the Authority and permitted it to file an answer. The Authority appeared through the attorney general, whose joint answer served as the amended answer for the State of California, heretofore set out in part, and the answer of the Authority. The latter assumed a neutral attitude so far as the validity of the contract was concerned, and prayed that a decree issue declaring the rights of the parties but not purporting to adjudicate the right or interest in or to water or water rights or respecting the regulation or use thereof under the laws of the state. The principal attorney for the Division of Water Resources of the Department of Public Works appeared as amicus curiae on behalf of the Water Project Authority.

The trial of the case insofar as the taking of evidence was concerned took place on April 3, 1951. The record consists of [617] documentary evidence and other matters of which the court may take judicial notice. There are no

disputed questions of fact. Briefing in the trial court was extensive and oral argument was not presented until more than a year later. The findings of fact and conclusions of law were signed and judgment was entered on February 27, 1953, denying confirmation of the contract on numerous grounds. Under the statute if the contract fails of confirmation on one material ground it must fail of confirmation as a whole. (See Wat. Code, § 22680.) However, as the trial court refused confirmation on many grounds, more than one must be ruled upon for the guidance of the trial court in possible further proceedings. The judgment contained injunctive orders prohibiting the district from refusing or failing to supply to the defendant Courtney McCracken water for irrigating purposes for all of his lands within the district and in general from proceeding under the contract. Since the judgment declaring the invalidity of the contract must be affirmed, the injunctive provisions may be disregarded. Neither those provisions nor anything herein should be taken as prohibiting the contracting parties from renegotiating a new contract or from continuing the distribution of water pending such negotiations.

Notices of appeal were filed on March 16, 1953, by the plaintiff Ivanhoe Irrigation District, and on March 17 by the People of the State of California and the Water Project Authority of the State of California. The district and the state have filed joint briefs. Reply briefs have been filed by the defendant Courtney McCracken supporting the judgment and the State Engineer who seeks a judicial declaration of the nature of appropriative water rights under the state law, the legal status of the state

in relation to water subject to appropriation, the status of the United States as trustee for the benefit of the project water users, and the interpretation of certain provisions of the federal Reclamation Project Acts of 1902 and 1939 hereinafter referred to. Amici curiae briefs in support of the judgment have been filed by the California Farm Bureau Federation and the Di Giorgio Fruit Corporation. An amicus curiae brief has been filed by the Ventura County Flood Control District, which does not attack the judgment as to the invalidity of the contract but contends that the court's conclusion of law to the effect that the water rights involved are appurtenant to the lands upon which the water is now used or is to be used, is not in accordance with existing law. The federal government is not a party to the appeal but it is apparent [618] that its attitude is reflected in the position of the attorney general, particularly with reference to the 160-acre limitation hereafter discussed. There is no disagreement on the part of any party appearing as to the correctness of the judgment of the trial court that the title to and control over the unappropriated domestic waters of the state are vested in the state in trust for the water users of the state.

The questions raised in this case cannot be answered without reference to the nature and character of the title to the water rights involved. Closely related thereto and in part determinative thereof are the efforts put forth by the state in aid of the development of its water resources for the benefit of the people of the state, which efforts finally resulted in part in the Central Valley Project. From the beginning it was realized that the growth and development of the state, from the standpoint of agricul-

ture, industry, population and general welfare, required sources of water supply in addition to the annual rainfall and underground supplies. This was especially true in the vast arid or semi-arid sections of the state, including the great central valleys of the Sacramento and San Joaquin Rivers.

Authorization to inquire into the problem was provided for as early as 1850. (Stats. 1850, p. 256.) These efforts were repeated in 1878 (Stats. 1878, p. 634), in 1911 (Stats. 1911, p. 822), in 1913 by the adoption of the Water Commission Act (Stats. 1913, p. 1012), and in 1915 (Stats. 1915, p. 514). In 1921 a state-wide conservation plan study was authorized (Stats. 1921, p. 1685) and reports thereon were made to the Legislature in 1923 in Public Works Bulletins Numbers 4, 5 and 6. In 1923 the Legislature failed to furnish funds for further studies and money was provided by the Chambers of Commerce of Los Angeles and San Francisco for that purpose. A further report was made in 1925 in Public Works Bulletin Number 9. This report emphasized the needed coordinated development in the Sacramento and San Joaquin Valleys. In 1925 the Legislature provided for further studies and reports (Stats. 1925, p. 1013) which were made to the Legislature in 1927 by Public Works Bulletins Numbers 12, 13, 14, 15 and 16. These reports also emphasized the needed coordinated development in the Sacramento and San Joaquin valleys. Following these reports the Legislature in 1927 (Stats. 1927, p. 508) deemed it advisable to provide for the appropriation within the provisions of the then Water Commission Act of all of the unappropriated waters of the various streams of the state which might be needed for

the coordinated plan of [619] conservation in the central valleys. It was under this authorization that the Director of Finance, beginning in 1927, filed some 37 applications on behalf of the state on streams within the central valley area, some of which were intended for the storage of water in the Friant Reservoir of the San Joaquin River and the construction of the proposed main canal southerly therefrom through the area of plaintiff district. Several of these filings cover water which is essential to the Central Valley Project.

As the result of the prolonged studies and planning by the state, the Legislature in 1933 enacted a statute designating the Sacramento-San Joaquin coordinated project as the Central Valley Project, and created the Water Project Authority as an agency of the state to construct, operate and cover the cost of the project, estimated at $170,000,000. (Stats. 1933, p. 2643.) The units and works to constitute the Project were defined in the statute. They included, among other works, Friant Dam and the Friant-Kern Canal to conduct water to and through the Ivanhoe area. That act is now contained in sections 11100-11830 of the Water Code.[2]

The Central Valley Project Act authorized the issuance and sale of $170,000,000 in revenue bonds. But in those days of depression and unemployment, such bonds were of doubtful or uncertain financial favor so far as the investing public was concerned. At any rate they were not sold

[2]An overall state water plan, entitled "The California Water Plan," was undertaken by the Director of Water Resources and a preliminary report was issued entitled "Report on the California Water Plan, Preliminary Edition," State Water Resources Board, Bull. No. 3, May, 1956."

and the state turned to the federal government for financial assistance. The problem then confronting the state was simply one of *money*. It is an undeniable fact that the State of California, without federal or other outside assistance, could have followed through with its plans for the development of the Central Valley Project if it had had the money with which to do it. The state was well equipped with an engineering staff and other expert assistance in its Department of Public Works, Division of Natural Resources, to construct and operate necessary works and facilities to do all that has been done by the United States. All that was needed was the money available through state channels and expendable under the authority of the state alone. The Legislature contemplated and required that the Water Project Authority "proceed with the construction of the project immediately upon [620] funds being available therefor" (Wat. Code, § 11452) and that the Authority have "full charge and control of the construction, operation, and maintenance of the Project and the collection of all rates, charges and revenues from it" (Wat. Code, §11451).

The studies of California water problems by the Board of Public Works through the State Engineer pursuant to legislative authority beginning in 1921 and extending over a ten-year period at state expense were far reaching. They have been characterized as "the most comprehensive and thorough going set of studies instituted by a state agency looking to the development of its natural resources." (History of Legislation and Policy Formation of the Central Valley Project, U. S. Dept. of Agriculture, Bureau of Agricultural Economics [1946].) The report based on

these studies (Public Works Bulletin 25, Report to Legislature of 1931 on State Water Plan) was officially approved by the Legislature in 1941. (Stats. 1941, p. 2943, Wat. Code, § 10001.) Admittedly the Central Valley Project is not the result of the planning, ingenuity and energy of the Bureau of Reclamation, but it is recognized by the Bureau and the Department of Interior to be the creature of the state. This is shown by the testimony of the Commissioner of Reclamation in relation to the Department's 1948 Appropriation Bill as follows: "The history of [the Central Valley Project] is also necessary to understand this project. This project has been a dream of over half a century in California. The Bureau of Reclamation did not start this project. It has been made the agent for completing it." (Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, Eightieth Congress, First Session on the Interior Department Appropriation Bill for 1948, p. 723.)

Faced with lack of state funds sufficient to finance such an extensive enterprise application was made to the United States for loans or grants of federal funds sufficient to construct initial units of the project. The loans sought were to be secured by the revenue bonds of the Project Authority authorized by the Central Valley Project Act. Although the engineering feasibility and the need for the project were recognized by the Financial Division of the Public Works Administration, and several other federal agencies reported favorably on the project, the economic soundness of the project was questioned and efforts along these lines were terminated. However, in 1935 the project was referred to the Bureau of Reclamation of the De-

partment [621] of the Interior for study. In the report of the Secretary of the Interior to the President on the 26th of November, 1935 (Booklet of Information for Conferences Between U. S. Dept. of the Interior and Water Project Authority of the State of California [Aug. 28, 1940], p. 16), on the feasibility of the project it is stated: "The next declaration required is that the cost of construction will probably be returned to the Federal Government. This is interpreted to mean that it will be returned within forty years from the time the Secretary issues public notice that water is available from the Project works. The estimated cost of construction is $170,000,000.00 and the annual cost, including repayment of all other charges, is $7,500,000.00. It is estimated that the annual revenues from the sale of water and of electric power will be sufficient to cover these charges. The favorable conditions heretofore recited justify the belief that the project will return its cost." Relying on this report the President gave his approval to the proposed plan as a federal reclamation project. (Booklet of Information, *supra*, p. 15.) The President, on recommendation of the Secretary of the Interior, allocated $20,000,000, later reduced to $4,200,000 under the Emergency Relief Appropriation Act of 1935, to initiate construction of the project. In that same year, with the passage of the Rivers and Harbors Act on August 30, 1935, a direct contribution of $12,000,000 from federal funds was authorized for the construction of Kennett (now Shasta) Dam. (U. S. Stats., 49 Stats., p. 1038.) Thereafter Congress regularly made funds available to the Bureau of Reclamation for the construction of the project, and prior to August 31, 1951,

a total of $396,937,427 had been appropriated. The Bureau of Reclamation established an office in Sacramento and commenced work on the project in 1935. Work on the project units including the plaintiff district's unit has been continuously prosecuted. It is to be noted that the allocations of funds by the federal government were generally made with a proviso that such funds were reimbursable in accordance with the reclamation laws. (See First Deficiency Appropriation Act of 1936, June 22, 1936; Booklet of Information, *supra*, pp. 23, 24, 25, 30, 31.)

There can be no question but that the Federal Bureau of Reclamation and not the Water Project Authority of the state has constructed those units of the Central Valley Project heretofore completed. But it appears from the foregoing and the following that the parties contemplated a state project to be eventually owned and operated by the state. [622] The Water Project Authority, at the request of the bureau, was in close cooperation with the bureau throughout. On March 25, 1936, a cooperative contract was executed between the United States and the Water Project Authority. This was followed by four additional supplemental contracts on March 13, 1937, November 8, 1937, January 17, 1939, and June 30, 1939. These contracts and others executed by the state's Department of Public Works provided, among other things, for the performance of certain tasks by the state agencies and approval of the Bureau's planning by the Authority. The first cooperative contract with the Authority contained a special provision as follows: "It is contemplated that at the earliest practicable date a contract will be entered into between the United States and the Water

Project Authority, providing for, but not limited to: (a) The operation and maintenance by the authority of useful units of the project, upon presenting assurance of payment satisfactory to the United States of the cost thereof. (b) Appropriate payment by the authority to the United States for expenditures in construction of the project." In the second and third supplemental contracts the special provision was restated in about the same terms. On February 15, 1939, the governor of the state addressed a letter to the Secretary of the Interior in which he suggested that a contract be entered into immediately providing for the administration, operation and maintenance of the project by the Authority, and for the repayment of the reimbursable costs of the project by the Authority to the United States. In answer thereto the Secretary of the Interior suggested procedures by which state agencies might take over certain facilities. No definite developments resulted along this line.

The United States has acquired in its own name rights to certain domestic waters of the state. These rights are to waters which are essential to the success of the Central Valley Project. No claim is made that such water has been acquired for any purpose other than for the use and benefiit of the project. The nature of the interest or title which the United States has acquired is hereinafter referred to. The United States owns no lands in the Central Valley, and by express provision the acquisition of water rights in most instances was for the benefit of the Central Valley Project or units thereof. The greater portion of water to which the United States has acquired rights is by assignments from the state's Director of Fi-

nance. (Wat. Code, § 10500 through 10506.) Four assignments of applications for the appropriation of [623] unappropriated water of the Sacramento River, totaling 35,000 second feet diversion and 12,690,000 acre-feet annual storage, were made on September 3, 1938. On September 30, 1939, three assignments of applications for the appropriation of unappropriated water of the San Joaquin River, totaling 9,500 second-feet diversion and 4,420,000 acre-feet annual storage, were made to the United States. Requests for additional assignments have been made to the Director of Finance by the United States. The assignments made were in trust for the use and benefit of the Central Valley Project and with the necessary reservation that the landowners and inhabitants within a watershed area or other area conveniently supplied by the watershed area are not to be deprived of their prior rights to water reasonably required for their beneficial needs. (Wat. Code, § 11460 and 11463; see Wat. Code, § 11128, as added in 1951 [Stats. 1951, p. 3216].)

The United States itself, between 1943 and 1952, as original applicant, filed eight applications for the appropriation of unappropriated water totaling 33,810 second-feet diversion and 2,646,000 acre-feet annual storage of domestic waters of the state. In all instances these applications were made for specific purposes in connection with the Central Valley Project.

The United States has also acquired through contract extensive riparian, appropriative and prescriptive water rights in the San Joaquin River once held by Miller and Lux, Inc. Water rights in the area involved have been the subject of considerable litigation. (See *United States v.*

Gerlach Live Stock Co., 339 U.S. 725 [70 S.Ct. 955, 94 L.Ed. 1231]; *Everett G. Rank v. Krug, U. S. Dist. Ct., Southern Dist. of California, Northern Div. No. 685 N.D.*, 142 F.Supp. 1; *Hollister Land & Cattle Co. v. Krug, U. S. Dist. Court, Southern District of California, Northern Division, No. 680-N.D.*, [*Rank v. Krug*, 90 F.Supp. 773, 806].) It is asserted that the United States intends to divert some of this water to the Central Valley Project. By agreement dated May 24, 1939, between the United States and the Madera Irrigation District, the United States acquired assignments of all of the District's applications to appropriate the water of the San Joaquin River, grants of the Friant Dam site, portions of the reservoir area and certain gravel deposits. In addition to the foregoing, the United States has acquired, or is in the process of acquiring, the riparian, appropriative and prescriptive water rights of hundreds of smaller landowners, all of whom are affected by [624] the construction of units and the diversion of water for the Central Valley Project.

In view of the foregoing circumstances the trial court properly refused to eliminate the issue of title from the case. It is obvious that the attorney general of the state and the Secretary of the Interior could not, by agreement, exclude from the proceeding the question of title or ownership of water or foreclose other interested parties from pressing it as a vital question in the case. There is no dispute between any of the parties appearing in the litigation as to the nature of that title and it is of great importance for upon it depends the extent to which the state or the United States or any party dealing with

the domestic waters of the state may exercise powers of control.

If the United States, or the State of California or any of its agencies, should be declared to be the owner of the title to the water without restriction it would necessarily follow that it would have complete dominion and control over such property for purposes of distribution or for any other incident of ownership and use. In such case the principles of law applying to unrestricted ownership would control. On the other hand if the United States or the State of California or its agencies, in dealing with the storage, sale, distribution and use of such water, is acting as trustee for the beneficiaries of the trust, other principles of law, namely the law of trusts, would necessarily apply. The exclusion of the question of title from the case could be justified only on the theory that without question, and as a matter of law, the fee simple unrestricted title to the water is in the state or in its assignee, the United States, or in the United States other than by assignment unaffected by the claims of the landowners in the District as to beneficiaries of a trust. Such a theory finds no support in the present case.

A trust relationship has existed at all times here involved, and now exists, between the State of California and the water users of the state, including the water users of the plaintiff district, as to all waters the control of which has been acquired by the state by appropriation or purchase. As stated it is asserted by appropriate allegations in the pleadings of all of the parties formally appearing as parties defendant, including the State of California, and the existence of such a trust relationship

is not denied by the plaintiff district or by any party appearing in the proceeding. It is only because of the position alleged to be asserted by the United States that it is vested with absolute ownership in and to the [625] water to be distributed to the lands in the district, and to the property of the district used and usable in the distribution of water to lands therein, that the question of title has arisen. The question is also important as bearing on the contention of the landowners in the district that the contract would deprive them of vested rights without due process of law and without just or any compensation.

In considering the question of the title of the United States and of the State of California in and to the domestic water of the state and the corresponding limited measure of control which they may exercise over them, it is well to consider certain historical phases of the water law of this state. And this may be better understood by considering the attitude assumed by some of the water users of the state in their contentions for many years that they had absolute and unrestricted title and dominion over the waters riparian to their lands to the exclusion of the rights of the state in administering the trust imposed upon it by the water law of the state for the benefit of other water users.

In the early history of California the waters of the rivers and streams of the state, especially in the northern section were used for placer and hydraulic mining, the raising of livestock, domestic and kindred purposes. It was early realized that water in this semiarid region was of utmost importance to the welfare, progress and prosperity of the people of the state. There were few court

decisions on the subject having a statewide significance prior to the case of *Lux v. Haggin* in 1886 (69 Cal. 255, 454 [4 P. 919, 10 P. 674]). At that time section 4468 of the Political Code provided as follows: "The common law of England, so far as it is not repugnant to or inconsistent with the constitution of the United States, or the constitution or laws of the state of California, shall be the rule of decision in all the courts of this state." This court took the general language of that declaration by its four corners and applied the English common-law doctrine of riparian rights to the ownership, control and use of the waters of the rivers and streams of the state. The doctrine was declared to be that the owner of real property bordering such a river or stream had a right coexistent with the same rights of other landowners on the stream, to the use of its waters and the flow thereof as it was "wont to do in the course of nature" unimpaired in quality and undiminished in quantity. This right was declared by this court in *Lux v. Haggin, supra,* 69 Cal. 255, to be a right appurtenant to the land, in fact a part and parcel of the land itself. Under this doctrine [626] the riparian owner had the right to insist that the full flow of the stream continue to pass by his land in its natural state whether he needed the water or not. This riparian right as so defined was declared by this court to be a property right which vested in the riparian owner and as such was protected by the state and federal Constitutions. It could not be limited or impaired without due process of law and without just compensation. The enforcement of that right as so defined led to the adoption of the Water Commission Act of 1913. (Stats. 1913, p. 1012.)

By the provisions of that act it was sought, among other objectives, to subject the enjoyment of the riparian right to the rule of reasonable beneficial use. Accordingly it was provided in that act that the use of the waters of the rivers and streams of the state on the part of the riparian owners be limited to the water they could reasonably use for beneficial purposes and that whatever water remained in the stream flow would be subject to reasonable use through appropriation or other methods provided by law. The substance of what the Legislature was endeavoring to do was to provide, in the exercise of its police power, that the riparian owner could continue to have the right to the benefit and enjoyment of the waters of the stream both in the present and in the future insofar as he was able to put it to beneficial use on his own land but that beyond that he could not insist that the water flow by and beyond his land whether he needed it or not. Nevertheless this court adhered to the doctrine of *Lux v. Haggin* and by judicial interpretation made ineffective those provisions of the Water Commission Act of 1913 designed to restrict riparian rights to reasonable beneficial use. In *Herminghaus v. Southern Calif. Edison Co.* (1926), 200 Cal. 81 [252 P. 607], the court reannounced its adherence to the ancient doctrine and held in effect that no matter how unreasonable the claim of a riparian owner to the full flow of a stream might be he had the right to assert it.

Following that decision the Legislature sought to implant in the Constitution of the state, and there was subsequently incorporated in that document, the provisions of section 3 of article XIV, which again declared the

policy of the state "that the general welfare of the state requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use [627] thereof in the interest of the people and for the public welfare. . . . Riparian rights in a stream or water course attach to, but to no more than so much of the flow thereof as may be required or used consistently with this section, for the purposes for which such lands are, or may be made adaptable, in view of such reasonable and beneficial uses; provided, however, that nothing herein contained shall be construed as depriving any riparian owner of the reasonable use of water of the stream to which his land is riparian under reasonable methods of diversion and use, or of depriving any appropriator of water to which he is lawfully entitled."

The foregoing amendment to the Constitution as proposed by the Legislature in 1927 and adopted in November 1928 focused the attention of the courts upon the persistent endeavor of the people of the state, first through the Legislature in 1913 by the adoption of the Water Commission Act in that year and then by the constitutional amendment in 1928, to put into effect the doctrine of reasonable beneficial use. The obvious purpose of the new constitutional provision was to invite and urge a judicial declaration that the vested right of the riparian owner be subjected to that doctrine. Thereafter this court so declared. (*Gin Chow v. Santa Barbara* (1933), 217 Cal.

673 [22 P.2d 5]; *Peabody v. City of Vallejo* (1935), 2 Cal. 2d 351 [40 P.2d 486].) Within the scope of reasonable beneficial use, vested rights of the riparian owner continued to attach to his land as a part and parcel of the land itself, and as such was necessarily protected from unlawful encroachment by both state and federal Constitutions. The result is that this vested right as now defined may not be destroyed or infringed upon without due process of law or without just compensation under either Constitution.

No encroachment on the vested rights of riparian owners is directly involved in this proceeding, but the foregoing observations are pertinent as bearing upon the rights of the people of the state, both present and prospective, to avail themselves by appropriation or other lawful means of the right to the use of waters to which a prior lawful use has not attached. In this category the waters here sought to be furnished to and used by the landowners in the district must be classified. We are therefore here directly concerned with the title, distribution and use of water which has not heretofore been subjected to beneficial use except as contemplated by acquisition, by appropriation or otherwise on the part of the State of California and the United States.

It is thus apparent that the more recent changes in the [628] constitutional and decisional law of this state, had the effect of making available for beneficial uses by appropriation and other means great volumes of unappropriated domestic waters of the state. The nature of the title to the waters here involved is further indicated by the statutory law of this state. The title to these waters was

mentioned at an early date in the amendment of section 1410 of the Civil Code in 1911 which provided that "All water or the use of water within the State of California is the property of the people of the State of California" subject to appropriation and use in the manner prescribed by law. That provision in effect was carried into section 11 of the Water Commission Act of 1913 which provided that "All waters flowing in any natural water course in the state excepting so far as such waters have been or are being applied to useful or beneficial purposes, upon, or in so far as such waters are or may be reasonably needed for useful, and beneficial purposes upon lands riparian thereto, or otherwise appropriated, is and are hereby declared to be public waters of the state of California and subject to appropriation in accordance with the provisions of this act." (Stats. 1913, p. 1018.) The same provision was carried into the Water Code in 1943 as section 102.

Section 104 of that code provides: "It is hereby declared that the people of the state have a paramount interest in the use of the water of the State and that the State shall determine what water of the State, surface and underground, can be converted to public use or controlled for public protection." Section 105 of the same code provides that "It is hereby declared that the protection of the public interest in the development of the water resources of the State is of vital concern to the people of the State and that the State shall determine in what way the waters of the state, both surface and underground, should be developed for the greatest public benefit." Section 1052 of that code provides that the diversion or use

of water other than as authorized by the code is a trespass and the Department of Public Works, acting through the State Engineer, may initiate actions in the superior court to have the trespass enjoined.

It has long been the established law of the state that an irrigation district is trustee for the landowners within the district and limited in its trust to receive and distribute water to them. (*Merchants Nat. Bank v. Escondido Irr. Dist.*, 144 Cal. 329 [77 P. 937]; *Tulare Irr. Dist. v. Collins*, 154 Cal. 440, 442 [97 P. 1124].) In the Merchants Bank case the court stated: "But here, the corporation in question is distinguished [629] from ordinary municipal corporations by the fact that 'the legal title,' only of the property of the corporation is vested in the district, 'in trust for the uses and purposes set forth in (the) act'; and that the beneficiaries of the trust—who, upon familiar equitable principles, are to be regarded as the owners of the property—are the landowners in the district with whose funds the property has been acquired (Civ. Code, § 853); and in whom, indeed, is vested by the express provisions of the statute, in each, the right to the several use of a definite proportion of the water of the district, and in all, in common, the equitable ownership of its water rights, reservoirs, ditches, and property generally, as the means of supplying water. (Stats. 1887, pp. 34, 35, §§ 11, 13.) Such rights as these cannot be distinguished in any way from other private rights, and therefore clearly come within the protection of the provision of section 13 of article I of the state Constitution . . . that 'no person shall be . . . deprived of . . . property without due process of law,' and of the similar provision of Sec-

tion 1 of the fourteenth Amendment to the constitution of the United States." (See also *Allen v. Hussey,* 101 Cal. App.2d 457, 472 [255 P.2d 674]; *Bottoms v. Madera Irr. Dist.,* 74 Cal.App. 681, 702 [242 P. 100]; *Colburn v. Wilson,* 23 Idaho 337.)

Likewise the state is not the owner of the domestic water of the state in the sense that it has absolute power and dominion over it to the exclusion of the rights of those who have the beneficial interest therein. The title is an equitable one residing in the water users of the state. The state as an entity is the holder of the legal title as trustee for the benefit of the people of the state, all of whom in the last analysis, are the water users of the state. (See *Hall v. Superior Court,* 198 Cal. 373, 383 [245 P. 814]; *Tulare Irr. Dist. v. Collins,* 154 Cal. 440, 442 [97 P. 1124]; *Merchants Nat. Bank v. Escondido Irr. Dist., supra,* 144 Cal. 329.) To avail themselves of the right thereto, individually, collectively or in a corporate capacity, administrative procedures have been established and are set forth in the Water Code and related statutory provisions. Compliance with those provisions is necessary in order that the right to use the water may be acquired, but always consistent with the trust relationship incident thereto. Occupying such a relationship it would be incompetent for the state to divest itself of the legal title, by grant, assignment or otherwise, in any way inconsistent with the rights of the beneficiaries. It would necessarily follow that it would be inconsistent with the trust for the state [630] to attempt to pass the legal title freed from the trust to any third party, including the United States. As trustee the state and its agencies, of

which the plaintiff district is one, are bound faithfully to administer that trust and are answerable to the courts, in the exercise of their traditional powers in equity, for the proper discharge of their stewardship. They must administer it consistently with and not in violation of the rights of the beneficiaries. (*Merchants Nat. Bank v. Escondido Irr. Dist., supra,* 144 Cal. 329; *Lindsay-Strathmore Irr. Dist. v. Wutchumna Water Co.,* 111 Cal.App. 688, 698, [296 P. 933]; *Allen v. Hussey,* 101 Cal.App.2d 457, 467 [225 P.2d 674].) But it is not to say that the state may not in the administration of the trust prescribe or provide for reasonable terms and conditions to which the beneficiaries must conform in order to have the benefit of expenditures made necessary in providing those benefits. These may be provided for by statute or, as here, by contracts when duly authorized by law.

The trust relationship existing between the state and the beneficiaries of the trust must therefore be kept in mind in connection with any transactions between the state or any of its agencies and outside parties. It follows that when an outside party, such as the United States, by contract, legislation or otherwise, steps into the shoes of the state to administer that trust by the development, conservation and distribution of the trust res, it is bound by the same rules of law as surround and govern the State of California or any other purveyor of water of the state for the benefit of its water users. The state may not therefore lawfully dispossess itself of the title to such water and may not surrender its control of the same in any way inconsistent with the administration of the trust under which the title is held. The state by general law

may and has in the main prescribed the terms and conditions under which the several classes of water users may become secure in their right to the water and use thereof. The water users of the state whose rights have not become vested within the classes above mentioned but who are dependent upon an adequate supply of fresh water for their existence in the manifold uses to which it may be supplied, have an inchoate right to such uses subject to like enforcement and equal protection of the law. This right is necessarily dependent upon compliance with reasonable rules and regulations attending it and to the circumstances of each case such as an adequate water supply, the ability of the supplier to furnish the water, reasonable payment for the [631] service and perhaps other conditions not necessary to mention in the conservation and distribution of a water supply in our complex civilization. This inchoate right of present and potential water users of the state is a right of which cognizance must be taken in dealing with the general subject of the water law of the state and in particular with the rights of landowners and water users within the plaintiff district.

It is therefore concluded that the title to the unappropriated domestic waters of the state is in the State of California in trust for the use and benefit of the beneficiaries of that trust; that the trust character of that title is anchored in the state by constitutional provisions, by statutes enacted in furtherance thereof, and by the decisional law of the state; that the beneficiaries of that trust are the water users of the state who in a general sense constitute all of the people of the state; that the beneficiaries of the trust relationship whose rights are here

under consideration are those present or prospective users who individually or in properly classified groups bring themselves within the orbit of the state law under which they may be in a position to demand benefits without discrimination, and that within that category are the landowners of the district. It is they who are in position to avail themselves of the right to beneficial use of the waters to be purveyed and to demand indiscriminate service. There is nothing in the foregoing declaration which interjects anything new into the water law of the state. It is but a recognition and redeclaration of existing fundamental concepts of this phase of our law.

It is well to consider at this point the federal law relating to the nature of the water rights acquired by the United States and affecting the rights of the land owners of the district thereunder. The Reclamation Act of 1902 (32 Stats. 388, 43 U.S.C. § 391) is the basic federal enactment on that subject. Under that law and subsequent laws in aid thereof, the Bureau of Reclamation is assuming to administer water through the Central Valley Project. Section 8 of the Act of 1902 provides: "That nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any state or territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder and the Secretary of the Interior, in carrying out the provisions of this Act shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any state or of the Federal Government or of any landowner, appropriator, or [632] user of water in, to, or from any inter-

state stream or of waters thereof; provided, that the right to the use of water acquired under the provisions of this Act shall be appurtenant to the land irrigated and beneficial use shall be the basis, the measure, and the limit of the right." The meaning and intent of section 8 of the Reclamation Act as it specifically applies to the waters involved in the Central Valley Project has been stated by the Supreme Court in *United States v. Gerlach Livestock Co., supra,* 339 U.S. 725. At pages 734-735 the court said: "Congress proceeded on the basis of full recognition of water rights having valid existence under state law. By its command that the provisions of the reclamation law should govern the construction, operation and maintenance of the several construction projects, Congress directed the Secretary of Interior to proceed in conformity with state laws, giving full recognition to every right vested under these laws. *Cf. Nebraska v. Wyoming,* 295 U.S. 40 [43 L.Ed. 1928, 1291, 55 S.Ct. 568]; *California Oregon Power Co. v. Beaver Portland Cement Co.,* 295 U.S. 142, 164 [79 L.Ed. 1356, 1364, 55 S.Ct. 725]; *Nebraska v. Wyoming,* 325 U.S. 589, 614 [89 L.Ed. 1815, 1829, 1830, 65 S.Ct. 1332]; *Silas Mason Co. v. Tax Com.,* 302 U.S. 186 [82 L.Ed. 187, 58 S.Ct. 233]. . . . . We think it clear that throughout conception, enactment and subsequent administration of the plan, Congress has recognized the property status of water rights vested under California law. The governing water law of California is now derived from a 1928 amendment to its Constitution . . ." (Art. XIV, § 1) ". . . to which," as the Supreme Court in the Gerlach case said, "the Federal Reclamation Act defers." (See also *United States v. Rio*

Grande Dam & Irr. Co., 174 U.S. 690 [19 S.Ct. 770, 43 L.Ed. 1136]; *State of Connecticut v. Commonwealth of Massachusetts*, 282 U.S. 660 [51 S.Ct. 286, 75 L.Ed. 602].) Thus the federal government both by legislation and court decision has recognized that the law of this state is determinative of rights to water in this state. This court also so held in *Peabody v. City of Vallejo*, 2 Cal.2d 351, at page 366 [40 P.2d 486].

We therefore feel free to declare that in all transactions between the United States and the State of California or its agencies such as the plaintiff district, the parties are dealing with trust property held by the state or by those who have acquired rights to it from the state or otherwise for the benefit of the real owners thereof. They are the present and prospective water users of the state who may become entitled thereto under the laws of the state. Whatever interest or title [633] the United States has acquired to water by appropriation, assignment or by other means of acquisition in furtherance of the execution of its trust relationship with the water users of the state is necessarily subject to the limitations of title herein determined.

It is to be observed that we are not here dealing with all of the problems incident to the relationship of the state and its agencies and the federal government in the construction, maintenance, control and operation of the works for the distribution and use of the domestic waters of the state. We are not here concerned with the ownership and control of interstate waters or any other waters coming within well recognized federal control. (See *Federal Power Com. v. State of Oregon* (June, 1955), 349

U.S. 435 [75 S.Ct. 832, 99 L.Ed. 1215].) We are not concerned with problems attending the title, sale, distribution and use of water in the development of government owned land for there are no federally owned irrigable lands within the plaintiff district. Nor are we concerned with questions relating to the sale and distribution of water by a privately owned public utility, nor with the distribution and sale of electrical energy developed through or by means of storage facilities constructed by the State of California or by the United States or both. We are here concerned only with questions of the title, sale and distribution of intrastate or domestic waters and with the title to the distributing system and facilities acquired for the specific purpose of irrigating the lands within the plaintiff district.

We now turn to the provisions of the contract in controversy. Considered in connection with the legislation surrounding it, both federal and state, the contract is an instrument which, from the standpoint first of its fiscal provisions, provides in Part B for the construction by the United States of a distributing system within the district for a specified consideration payable to the United States in 40 equal annual installments; and in Part A to furnish to the district and by it to the owners of irrigable lands within the district a supplementary supply of domestic waters of the state developed through the construction and operation of the Central Valley Project at a price per acre foot payable annually. The concept of repayment to the United States for its costs is the unmistakable theme throughout the entire transaction.

In entering into the contract the parties are dealing within statutory authorization but at arm's length. It is

not over simplification to state that the relationship of the parties so far as construction work is concerned is that of debtor [634] and creditor, for it is clear beyond question that they and the law under which they are operating contemplate that when the money expended by the United States has been repaid by the district or on its behalf, the district is entitled to an acquittance and will thereby become the owner of the distribution system and all of the property used and useful in the maintenance and operation thereof free and clear of any claims of others, to the same extent as if the district had constructed the distributing system itself with its own funds and had thus become the owner in trust for the water users within the district. As stated it is certainly true that it was within the power of the district under the laws of this state to do in the first instance all that the United States is obligating itself to do under the contract with reference to the construction of a distributing system. The district was authorized to obtain funds for that purpose by borrowing from the United States with or without the issuance of irrigation district bonds (Wat. Code, §§ 23280-23289) and it could contract for the payment for water distributed to it by or through an outside source at a fixed point of delivery upon the payment of the charges agreed upon from funds of its own, if available. (Wat. Code, § 22228.) In essence, therefore, we have here one party agreeing to provide the funds for construction work and undertaking to furnish water at a definite delivery point, and the other party agreeing to accept the water at that point with payment therefor at a fixed rate and repayment of the construction charges in installments within 40 years, coupled with what appears

to be all sufficient assurances of security in the event of nonpyament. Within the compass of those provisions there can be no doubt of the right and power of the parties to lawfully contract.

Included in the assurance of payment according to the contract are obligations on the part of the district to provide funds for repayment by taxation of the lands within the district, by assessments against the lands for that purpose and the fixation of water charges sufficient to provide the security required by the United States. It is the right of the United States to demand that assurances of security for repayment of monies advanced by it be included in the contract; and provisions to that effect are included therein. The contract goes further and provides that upon default in payments as they become due the United States shall have the right to take over the operation of the affairs of the district in order to assure timely and adequate repayment. Likewise, it is the right and duty of the district to have [635] included in the contract provisions for adequate clearance of its obligations to repay, including the designation therein of the amount expended or to be expended by the United States for the benefit of the district and its landowners, or to a workable provision thereir as to how the amount advanced by the United States may be ascertained when the time for final accounting, repayment and acquittance arrives, together with the designation of a definite time when repayment is finally due. The present contract does not with certainty set forth such fiscal matters, particularly as it relates to repayment for the construction of the major storage facilities from which water will be de-

livered to the district. Upon repayment the district would succeed to whatever title to lands, structures or works acquired by the United States within the district in aid of its activities on behalf of the district and the landowners within the district, in like manner and to the same extent as an ordinary debtor is entitled to a satisfaction of record evidencing the payment of his indebtedness.[3] (See *Owl Creek Irr. Dist. v. Bryson*, 71 Wyo. 30, at pp. 69-70 [253 P.2d 867, 258 P.2d 220].)

Although the relationship of debtor and creditor is clearly established on the record, it is not clear in what way the district and its landowners may become free of indebtedness upon repayment. For example, it is provided in the contract that the United States may acquire property within the district in its own name for the purpose of constructing the distributing system, and that pursuant to an act of Congress authorizing such acquisition of property for the benefit of the landowners of the district, the United States may divest itself of ownership only in such manner as may be provided by Congress. Obviously such a provision in the agreement is contrary to the debtor-creditor relationship existing between the United States and the district. The right and obligation on the part of the United States would seem to be to hold the property thus acquired by it in its own name

[3]In an obvious attempt to correct the uncertainty in contracts entered into pursuant to existing reclamation law, recent legislation by Congress has defined in greater detail the allocation of payments for water service between operation, maintenance and construction costs of reclamation projects. (Pub. L. No. 643, 84th Cong., 2d Sess. § 1(3) (July 2, 1956), 70 U.S. Stat. 483-484 (1956).) Such legislation, of course, was not in effect at the time the present contract was entered into and the judgment herein entered.

only until final repayment is made, with the right of the district to a conveyance thereof not dependent on a future and necessarily discretionary act of Congress. [636]

However, it is mainly because the contract includes provisions not relating to its fiscal aspects that the defendant landowner, the State Engineer representing the Division of Water Resources of the Department of Public Works and amici curiae are opposing it.

On behalf of the state, the attorney general first directs his attack upon that portion of the judgment which holds the 160-acre limitation of the contract void as applied to the state, to the district and to the owners of irrigable land within the district. The genesis of the 160-acre limitation is found in the original Reclamation Act of June 17, 1902, heretofore referred to. (32 Stats., p. 388.) That act is entitled "An act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for reclamation of arid lands."

It is relatively a brief enactment. It occupies less than three pages of the Statutes at Large of the 57th Congress. Section 1 provides that all moneys received from the sale and disposal of public lands in western states should be set aside in a special fund known as the "reclamation fund." This fund is to be used in the examination and survey for and the construction and maintenance of "irrigation works, diversion, and development of water for the reclamation of arid and semi-arid lands in the said States and Territories." Subsequent sections provide that the Secretary of the Interior construct appropriate irrigation works; that he may withdraw certain

public lands from entry, or restore other lands to public entry; as such lands are required for irrigation works; "that public lands which it is proposed to irrigate by means of any contemplated works shall be subject to entry only under the provisions of the homestead laws in tracts of not less than forty nor more than one hundred and sixty acres"; that the Secretary may limit the area per entry of such public lands to be irrigated; that he shall fix the charges "which shall be made per acre upon the said entries, and upon lands in private ownership which may be irrigated by the waters of the said irrigation project"; that no "right to the use of water for land in private ownership shall be sold for a tract exceeding one hundred and sixty acres to any one landowner, and no such sale shall be made to any landowner unless he be an actual bona fide resident of such land"; that the Secretary is authorized to use the reclamation fund to accomplish the purpose of the act; that when repayments required by the act "are made for the major portion of the lands irrigated from the waters of any of the works herein provided for, then the [637] management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby" except that "the title to and the management and operation of the reservoirs and the works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress," and that the Secretary may acquire, by judicial process or otherwise, the lands necessary to carry out the purpose of the act.

It is noted that the repayment period was originally 10 years as provided for in section 10 of the act. It was

increased to 20 years by the Reclamation Act of 1941. (38 Stats. 686, 687.) It was changed by the Second Deficiency Act of 1924 to an indefinite period determined by the productive power of the land. (43 Stats. 702.) It was again changed in 1926 to 40 years by the Interior Department Appropriation Act of 1927. (44 Stats. 479.)

It is readily observed from the provisions of the Reclamation Act of 1902 that one of its main purposes was to provide for the reclamation of vast areas in the 17 western states and territories where title to the land was still in the federal government as owner, and the development of that land into private ownership was deemed essential to the general welfare in establishing homes and small farming enterprises in the great western domain.

As a part of this farsighted plan of the federal government it was undoubtedly recognized that the desired result could best be accomplished by limiting the amount of land thus to be purchased and developed. To justify such a limitation in the contract in question, the attorney general points to other federal enactments which it is claimed were designed for the same purpose and which are claimed to have had the same effect. Among these enactments are the Homestead Act of May 20, 1862 (12 Stats. 392) where it was provided that the amount of land to be acquired by any one person from the federal government should not exceed 160 acres. Again on May 10, 1872, the Mines and Mining Act provided for a limitation on a mining claim usually running lengthwise on the vein of ore. (17 Stats. 91.)

Another illustration of a limitation placed by the federal government on the sale of its publicly owned land

is found in the Desert Land Act of March 3, 1877 (19 Stats. 377), where a limitation of 320 acres was placed on a purchase by one individual. One of the conditions of purchase of land under that act was that the entryman or purchaser provide for the water to reclaim the desert land. Another illustration [638] is the Timber and Stone Act of June 3, 1878, where a limitation for purchase by an individual was placed at 160 acres (20 Stats. 89).

Further research would probably disclose other illustrations, but sufficient have been noted to demonstrate that the federal government in all of such instances has exercised its power as the owner of the land to be offered for sale. No limitation on its power to sell and convey its own lands existed or could properly be asserted. The United States was the owner of the fee with all the rights of proprietorship. It could sell or refuse to sell as it pleased. It could and often did withdraw such lands from entry or sale. As proprietor it could part with its lands under such terms and conditions of sale it saw fit, including a limitation on acreage, price, term of payment, and otherwise. However, in its activities as the owner and grantor it controlled the limitation only as to the first purchasers. It is common knowledge that after the title passed to the buyer, the land then was subject to resale to grantees either private or corporate within the ordinary channels of purchase and sale in the field of private property acquisition and ownership. The buyer was then in position to sell to whom he pleased, or accumulate properties similarly purchased by others so that his total acreage might far exceed the original statutory acreage limitation.

We attribute no merit to argument on behalf of the respondents that the 160-acre limitation was conceived as a socialistic scheme to divide up private property for the benefit of the many at the expense of "larger landowners." It may not be denied that the 160-acre limitation originally had a social objective. It was designed to encourage home seekers to obtain and develop land owned by the federal government in the undeveloped western states and territories. The plan sought to arouse the interest of as many settlers as possible and to prevent, so far as could lawfully be done, the accumulation of large tracts of land by single individuals. This the government, as sole owner, could do as it pleased, without let or hindrance.

Contrasted with the social objective of a land limitation in furtherance of the plan to encourage individuals as home seekers to purchase government lands and to initiate and increase the productivity of undeveloped public lands was the objective of the federal government in another field. That was in the grant to corporations seeking to provide transcontinental transportation of alternate sections of land for 20 miles on each side of the railroad right of way, as provided for [639] in various acts of Congress. (See 43 U.S.C. § 881, et seq.) In a large sense it may be said that those grants had the social objective of aiding in the increase in population and development of the vast uninhabited expanse of land owned by the federal government by affording transportation more convenient, timely and certain than the covered wagon, the stage coach and the pony express.

The foregoing objectives and others which might be mentioned were well within the power and control of the

federal government as the owners of the lands to be granted or otherwise disposed of. But we are not here dealing with social objectives as such. We are here concerned with the question of the extent of power, dominion and control which the United States as a trustee may exercise to deprive beneficiaries of the trust, namely, the water users of the state and particularly those in the plaintiff district, of a property right thereunder or of an inchoate right to the use of water within the district.

Under articles 34, 35, 36, and 37 of the contract, the owner of land in excess of 160 acres is called a "large land owner," and lands in excess of 160 acres are called "excess lands." If a so-called "large land owner" desires to avail himself of the benefits of project water on any of his lands, he must select from his larger tract 160 acres of land which is to be retained by him for the use of water. If the landowner refuses to make the selection, the members of the board of directors of the district may do so without his consent. If they do not, the Secretary of the Interior makes the selection. Excess lands may not receive water unless prior thereto the landowner executes a recordable contract between himself and the United States, whereby he agrees to sell his land in excess of 160 acres within 10 years at a price to be fixed by an appraisal board consisting of one appraiser appointed by the district, one by the Secretary of the Interior, and the two choosing a third. The landowner has no voice in the appraisal. The appraised value must be fixed as of the time of the execution of the recordable agreement and the appraisal cannot take into consideration any increase in the value of the land resulting from the supply of water to the land, or from any other normal increase in

value such as might result from an increase in popula tion, an extraordinary increase in the productivity of th land or perchance the discovery of oil or other valuabl substances beneath the land. In practice, according t official government statements, the interpretation place on contractual provisions required by federal law (Sec tion 46, Omnibus Adjustment Act of 1926, 44 Stats. [640 636) similar to the excess land provisions here is as fol lows: "Thus the administrative procedure usuall adopted had been to refuse to deliver water to any lands excess or non-excess, until the owner of excess land ha executed a recordable contract agreeing to dispose of th excess." (Land Ownership Survey on Federal Reclama tion Projects, Department of the Interior [1946], p. 47.

It thus appears that the federal statute as interprete by those administering it states in effect to the owner o land within the district susceptible of irrigation: "If yo own more than 160 acres of land within the District yo may not enjoy one of the incidents of that ownership namely, the right to the use of water to which you ar entitled on all your land unless you agree to execute recordable contract to sell your land in excess of 160 acre within 10 years at a price fixed by a board of appraiser in whose selection you have no voice and at a price t which you do not agree." In addition, no account is take of the item of possible damage to the remainder of th land because of a possible severance, and a possible nat ural increment in land values.

The duty of both of the contracting parties in the per formance of their obligations to the landowners in th district is set forth in section 22250 of the Water Code. I

is there provided that water distributed by districts shall be "apportioned ratably to each landowner upon the basis of the ratio which the last assessment against his land for district purposes bears to the whole sum assessed in the district" except as provided otherwise in the code. No pertinent exceptions appear.

In addition to his right to due process, the landowner McCracken is entitled to equal protection of the laws. Discrimination among water users in an irrigation district is expressly contrary to state law as expressed in the above quoted section 22250 of the Water Code. The well established rule on this subject is expressed in *City of Pasadena v. Stimson,* 91 Cal. 238 at pages 251 and 252 [27 P. 604] as follows: ". . . although a law is general and constitutional when it applies equally to all persons embraced in a class founded upon some natural or intrinsic or constitutional distinction, it is not general or constitutional if it confers particular privileges or imposes peculiar disabilities or burdensome conditions, in the exercise of a common right, upon a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law." (See also *Matter of the Application of Miller,* 162 [641] Cal. 687, 698 [124 P. 427].) Notwithstanding the fact that the 160-acre limitation has been a part of the Reclamation Law for more than 50 years, a diligent search has failed to disclose that the imposition of the limitation has been approved by any court of last resort, either state or federal, in a situation where the federal government had no interest in the lands to be irrigated and possessed only a trustee's interest in the waters to be applied. On the other hand the Supreme

Court of Wyoming in *Owl Creek Irr. Dist. v. Bryson, supra* (1953), 71 Wyo. 30, beginning at page 67 had the following to say with reference to the terms of a contract similar as to the excess land provisions to the terms of the present contract: "The large landowner is specifically defined in this subdivision and additional burdens imposed upon him. He is forbidden to receive water for excess lands until he acquiesces in all the conditions which by this and the two proceeding paragraphs are placed upon him. . . . These contract clauses which are thus questioned if applied to owners of private lands are unreasonable, coercive and devised to deprive them of their property against their will and without invoking the condemnatory processes which require due compensation to be made when land is thus taken. These proceeds embody the full protective machinery of the law as concerns the private property owner. These clauses now drawn in question . . . are subversive of the most elementary rights which our forefathers carried from English law to this country and which were centuries in their formation. . . . It is quite obvious if these contract clauses were to be scrutinized under the light of familiar constitutional limitations they would necessarily fall."

As to the acreage limitation of the contract, it is therefore concluded that the extent of the right of an owner of real property to the use and enjoyment of his property right, including the water right which may be attached thereto, cannot be constitutionally limited on the sole basis of the amount of property he owns. This is especially true with reference to property of the same kind and similarly situated. If there are any exceptions to the rule

which should be applied, they have not been pointed out, nor, on reflection, are they apparent. In other words there appears to be no basis founded in reason or authority why the owner of a property right which is or may be appurtenant to all of his land suitable for irrigation can be limited in the enjoyment of that right to 160 acres of his larger holdings. The same right should attach to his lands in excess of 160 acres and to the excess lands [642] of all those similarly situated. Thus to deprive members of the same class of their rights clearly results in an unlawful discrimination which as said in *Pasadena v. Stimson, supra,* 91 Cal. 238, is not "founded upon some natural or intrinsic or constitutional distinction." If a constitutionally authorized preferment may be extended only to owners of 160 acres of land or less the question might well be asked whether a like preferment might not be extended only to owners of more than 160 acres. The suggestion of either preferment under the long and well established rule governing classification is enough to demonstrate its impropriety.

Notwithstanding the long prevailing provisions of the original Reclamation Act of 1902 that in the construction and operation of the reclamation projects under the supervision of the Secretary of the Interior, rights vested under state law should not be disturbed and should be protected, the contract in controversy is proposing to transgress those vested rights. The plaintiff district and the United States, through its Bureau of Reclamation, are parties to the contract but as to both the record discloses that they deemed themselves bound by federal law to include these provisions in the contract. That law is included in the

original Reclamation Act of 1902. (32 Stats. p. 388.) It was reenacted and supplemented by the Omnibus Adjustment Act of 1926 as amended. (44 Stats. 636, § 46, now U.S. Public Lands Code Anno., 1955, § 423e.) Section 46 of that act requires that any contract with an irrigation district bearing the approval of the Secretary of the Interior shall include the 160-acre limitation. It is to be noted that this omnibus act covers many subjects dealing generally with federal reclamation projects where the intention of the act as shown by section 48 was the development of public lands and the rehabilitation of some 20 federal reclamation projects theretofore existing in many of the western states. The omnibus act is now included, in material parts, in Title 43 United States Code, sections 1 to 670, inclusive. This volume is entitled "The Code of the Laws of the United States of America, Title 43, Public Lands." A survey of this code shows that its provisions deal generally with the control, development and sale of public lands of the United States and section 46 may be deemed to apply to public lands alone. If, however, its general language as to the 160-acre limitation be considered as applicable to the purchase by the United States of unappropriated domestic waters of this state and, as here, its distribution to irrigation districts and privately owned lands in the state, such a construction would [643] obviously remove it from consideration as an "applicable" law governing the execution of the contract in question. Since its attempted application to the contract is unauthorized under the laws of this state it is necessarily not an "applicable" law. Also carried into the Public Lands Code of the United States is the provision

of the original Reclamation Act of 1902 that state laws remain unaffected by later enactments. This was recognized by the Supreme Court in the Gerlach case as late as 1950 where it said that when Congress directed the Secretary of the Interior to proceed under the Reclamation Act of 1902 he should not interfere with the laws of the state " 'relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder.' (32 Stats. 388, 390.)" (*United States v. Gerlach Livestock Co., supra,* 339 U.S. 725, at page 739.) As indicated the federal law could be applicable only on the theory that the United States is the owner absolute of the domestic waters of the state with the right to the use thereof freed from any trust relationship on behalf of the real owners thereof, namely, the water users in the district. As also indicated such a theory is untenable and it necessarily follows that the inclusion in the contract of articles 34, 35, 36 and 37 cannot be legally justified.

Attention has been called to section 23200 of the Water Code providing that under contracts such as the one in question water "shall be distributed and apportioned by the district in accordance with the applicable acts of Congress, the rules and regulations of the Secretary of the Interior thereunder, and the provisions of the contract." It is argued that since the 160-acre limitation is contained in the Federal Reclamation Act of 1902 the state, the owners of irrigable lands and the water users are subject to that limitation. But such is not the case. Section 23200 contemplates that *applicable* federal law shall apply. As previously noted the 160-acre limitation is inapplicable in the present case where the title to the water to be purveyed is not an unlimited title in the United States.

An important question relating to the debter-creditor nature of the contract is raised by the attorney general and concerns matters which the State Engineer as Chief of the Division of Water Resources deems essential to what is said to be the established water law in this state. We have heretofore declared the debtor-creditor nature of the contract in question. In arriving at that conclusion it was considered that applicable federal law requires that the contract specify a specific amount [644] of money to be repaid by the district by installments, within 40 years; that this is an obligation for repayment of the cost of construction of storage and delivery works, and that the payments by the district be credited against this obligation.

The attorney general asserts that this is an incorrect construction of the federal Reclamation Project Act of 1939 (53 Stats. 1195, 1196). He states that under present federal law the repayment of construction costs to the United States is governed by both section 9(d) and 9(e) of that act. Section 9(d) provides in part:

"No water may be delivered for irrigation of lands in connection with any new project, new division of a project, or supplemental works on a project until an organization, satisfactory in form and powers to the Secretary, has entered into a repayment contract with the United States, in a form satisfactory to the Secretary, providing among other things . . . (2) That the part of the construction costs allocated by the Secretary to irrigation shall be included in a general repayment obligation of the organization . . . (3) That the general repayment obligation of the organization shall be spread in annual installments, of the num-

ber and amount fixed by the Secretary, over a period not exceeding forty years, exclusive of any development period fixed. . . ."

As section 9(d) is read in the light of its particular provisions and of the general law, it is authority for the terms of Part B of the contract which provides for the repayment of a stipulated sum in installments within 40 years. If the construction obligations are not paid within the times specified, the remedies for the enforcement of payment by assessment, taxation and possibly other means are provided for in the contract.

Section 9(e) of the Reclamation Project Act of 1939 provides: "In lieu of entering into a repayment contract pursuant to the provisions of subsection 9(d) of this section, to cover that part of the cost of the construction of works connected with water supply and allocated to irrigation, the Secretary, in his discretion, may enter into short or long term contracts to furnish water for irrigation purposes. Each subcontract shall be for such period, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, due consideration being given to that part of the cost of construction of works connected with water supply and allocated [645] to irrigation, and shall require payment of said rates each year in advance of delivery of water for said year. In the event such contracts are made for furnishing water for irrigation purposes, the cost of any irrigation water distributing works constructed by the United States in con-

nection with the new project, new division of a project, or supplemental works on a project, shall be covered by a repayment contract entered into pursuant to said subsection (d)."

In view of the last sentence of section 9(e), it is conceded by the attorney general that Part B of the contract for the construction of the physical works is a repayment contract, but the question raised is whether the water delivery portions of the contract (Part A) are invalid because of inferences which may be drawn that the district and landowners therein are not entitled to water rights which continue beyond the 40-year term of the contract.

It is contended by the attorney general that the United States has properly contracted as a water purveyor under section 9(e). The State Engineer contends that the United States improperly assumes to take section 9(e) as its authority for an alternate method of contracting with the state, that is, that the United States has construed that section to mean that, in lieu of a definite contract for repayment within 40 years, the United States may waive or avoid the repayment provisions in regard to its water rights and obligation to supply water to the district and substitute therefor the right to renew or not to renew the contract as the occasion might suit its purpose and elect to continue to serve the district with water but under terms and conditions which it might impose in the nature of an utility service, with no power upon the part of the district as the contracting agency of the state to prevent it from so doing. It is claimed by the State Engineer that the United States and particularly the

Bureau of Reclamation and its legal advisers have decided that section 9(e) contains such authorization. The record supports that contention by documents and transcripts of hearings before Congressional committees which need not now be set forth at length.

It is because of this asserted authorization to the Bureau of Reclamation that the State Engineer is much concerned. The effect of the validation of this contract would be, impliedly at least, to approve a procedure by which the United States as a purveyor of the domestic waters of this state, might continue indefinitely to by-pass the established law of the state and procedures thereunder applicable to water services generally. [646]

In furnishing its domestic waters to consumers at a price, the activities of the United States under its purported construction of section 9(e) resemble those of a public utility acting in a proprietary capacity. As above noted, the Reclamation Act of 1902 provided that: "'Nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any state or territory relating to the control, appropriation, use or distribution of water used in irrigation, or any vested right acquired thereunder and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws. . . .'' It may fairly be said that the foregoing federal statutory provision remains in full force; that it controls the operations of the Department of the Interior so far as federal law is concerned, and that under the controlling state law, the furnishing of water to consumers by a utility must be subject to and be in conformity with certain rules and

regulations established by or under the authority of the Constitution and the statutes of the state.

Moreover, as we have already held, whatever title the United States has to the domestic waters of this state is limited by the trusteeship under which that title was acquired. The United States cannot administer the corpus of that trust except in the manner defined by the terms of the trust, namely, the applicable water law of this state. The attorney general argues that in this validation proceeding it is not necessary to consider what might or might not be contemplated at the termination of the contract, but the water rights of the landowners in the district, as members of the class to which the beneficiaries of the declared trust belong, are present and existing (see *Ickes v. Fox*, 300 U.S. 82, 93-94 [57 S.Ct. 412, 81 L.Ed. 525]), and they are entitled to a declaration thereof. "By directing the Secretary to proceed under the Reclamation Act of 1902, Congress elected not 'to in any way interfere with the laws of the State . . . relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder.'" (*United States v. Gerlach Livestock Co., supra*, 339 U.S. 725.) If this contract were construed as imposing upon the district and the landowners therein a burden under which they may suffer the loss of water rights at the discretion of the United States, such a construction would be contrary to well established constitutional principles and protections.

The validity of the contract is sought to be established under the Second Validating Act of 1949. (Stats. 1949, p. [647] 1511.) The attitude of the United States is reflected

in the position of the attorney general to the effect that "any non-constitutional defects in the contracts under state law" were cured by the act.

The act became effective on October 1, 1949, which was 90 days after the final adjournment of the Legislature of that year. The act "confirmed, validated, and declared legally effective . . . all Acts and proceedings heretofore taken by a public body under any law, or under color of any law, for the authorization" of "all instruments evidencing indebtedness of a public body incurred or to be incurred for any public purpose. . . ." The act includes proceedings taken by "counties, cities and counties, cities, public districts of every kind or class" and some 50 other specifically named public bodies, including irrigation districts. The attorney general contends that "this language clearly covers contracts between irrigation districts and the United States for a water supply and distribution system construction."

In this connection it appears that at the time the Second Validating Act of 1949 was passed by the Legislature the contract was not in existence; that it was not approved by the electors of the district until August 23, 1949, and that it was not signed until September 23, 1949. It would seem that validating statutes cover only those transactions or omissions which occur before the Legislature adjourns. Such acts no doubt serve a useful purpose but as said by Chief Justice Beatty in *Oakland v. Oakland Water Front Co.*, 118 Cal. 160 at pages 194 and 195 [50 P. 277]: "It is to be regretted . . . that a court should ever feel itself bound by rules of construction to give effect to statutes which ratify and confirm by wholesale

the acts of municipal or other political agencies of the state. There is no more reckless or dangerous species of legislation. It is really legislating with the eyes shut, and . . . should . . . be closely scrutinized and strictly considered in order to prevent as far as possible the evils which they involve. . . ."

If the position of the attorney general be sustained, it would mean that from the time of the final adjournment of the Legislature on July 2, 1949, to October 1, 1949, every city, city and county, county, and some 50 specifically named other public entities or agencies of the state could run full rein in violation of all of the laws of the state governing and regulating the making of contracts and the incurring of obligations for the payment of public moneys thereunder not constitutionally otherwise controlled. Likewise, within that [648] 90-day period they could do anything not yet subjected to regulation but which could be constitutionally authorized and this situation would continue during the 90 days after the final adjournment of the Legislature. A validation act assumes legislative consciousness of some act or omission on the part of the public body affected which is designed to be cured or confirmed. After the final adjournment of the Legislature and until the effective date of the act (90 days thereafter) there is no opportunity for the exercise of this legislative purpose to function. Obviously the only purpose of postponing the effective date of the act is to permit the referendum provision of the law to be made available.

Furthermore if the contract be deemed to include a utility type contract at the option of the United States, the Second Validating Act of 1949, or any validating act of

the character of the one here relied upon by the attorney general, could not render such a contract valid. It is well settled that the Legislature may ratify only what it could have theretofore authorized. It is obvious that the Legislature could not by a general ratifying statute breathe validity into a contract the effect of which would be to avoid all of the laws of the state, both constitutional and statutory, respecting the regulation and control of public utilities in this state. Assuming the plenary power of the Legislature to enact laws respecting the regulation and control of public utilities notwithstanding any provision of the Constitution to the contrary, (Art. 12, § 22, Constitution) nevertheless such legislation must appear on its face to be cognate and germane to the regulation of public utilities to come within the Legislature's plenary power. (*Pacific Tel. & Tel. Co. v. Eshleman*, 166 Cal. 640, 655, 656 [137 P. 1119, Ann.Cas. 1915C 822, 5 L.R.A.N.S. 652].) There is nothing on the face of this ratifying statute to indicate in the slightest degree that it relates to the regulation and control of public utilities. It is therefore ineffective to circumvent the laws of the state requiring regulation and control of activities which are in all essential respects those of a public utility. In addition any validating act could not have confirmed the 160-acre limitation for the obvious reason that the Legislature could not have theretofore constitutionally authorized it.

The district attorney of Ventura County has filed a brief as amicus curiae on behalf of the Ventura County Flood Control District. He calls attention to the declaration of the trial court in its conclusion of law to the effect that when water is furnished by a purveyor of water

under the laws of [649] this state to a landowner for irrigation purposes such owner thereby acquires a vested right to the continuance of such service.

Objection to the views of the trial court in this respect is made on the ground that they do not correctly reflect the present laws of the state on the subject. This is the only cause of concern on the part of counsel for the flood control district. The background for this objection is disclosed by the following facts: The Ventura Valley has highly developed urban and interurban industrial and agricultural areas which have been subjected to a shortage of water with threatened need of further sufficient supply. To alleviate this water condition the Ventura County Flood Control District was organized under chapter 44 of the Statutes of 1943 (p. 168). One storage dam has been constructed and another is in the course of construction or nearly completed. The distribution systems have not been completed but water is stored in the reservoirs. Pending the completion of the distribution systems the district is furnishing to certain lands outside of the district some of the stored water under contracts with the users that when the system within the district is completed and water made available to landowners within the district the use of water outside of the district will terminate. This arrangement was made because of the dire need of water on lands without the district for even temporary purposes and perhaps to tide the owners thereof to a time when they could develop an additional supply of water on their own behalf. If this temporary agreement with the outside land owners is not permitted because of the declaration

of the trial court, increasing amounts of water now in storage and to be stored in the reservoirs of the Ventura district will be required to go to waste.

There is no law of this state which may properly be invoked to prevent such a temporary arrangement. The question is pertinent to the present case because of the fact that a supplemental water supply has been furnished to land owners in the Ivanhoe Irrigation District by the United States for an extensive period pending the negotiations for a contract such as involved in the present proceeding.

There appear to be early cases to the effect that when a purveyor of the domestic waters of the state furnishes water to lands for irrigation purposes, the right of the owner of the lands to a continuance of the use may not be cut off. The rules of the earlier cases have in general been modified by enactments in the Water Code of the state with reference [650] to the use of water as authorized by the Constitution. As bearing on the right acquired by user in particular cases, including the rights of landowners in connection with the administration of the water law of the state Legislature has provided in division 11 (irrigation districts), part 5, chapter 2, article 2 (water distribution, § 22262) as follows: "No right in any water or water right owned by the district shall be acquired by use permitted under this article." (Stats. 1943, p. 1897, based on Stats. 1897, p. 259.) An identical provision is contained in that portion of the code pertaining to Water Districts (Wat. Code, § 35428). Other code provisions provide authority for entities supplying public water to serve some of their territories with water and not serve

others in the event of shortages. (Wat. Code, §§ 22252.1, 35435; Pub. Util. Code §§ 2708, 2710, 2711.)

It is claimed that article 26 of the contract purports to condition the delivery of water to a landowner otherwise entitled to delivery, upon the payment by him of any assessment levied although it has been judicially declared to be a void assessment. It seems unusual that a party should, except under compulsion, contract to pay an assessment declared to be void by a court of competent jurisdiction. But when taken as a reasonable and additional assurance of reimbursements to the United States for expenditures incurred on behalf of the district and to cover operating expenses in furnishing water to the district, it may be deemed a legitimate subject of contract.

Questions are raised as to the sufficiency of the notice of election whereby the electors of the district were called upon to approve the proposed contract, and the trial court concluded that the contract was invalid for lack of proper notice. (Wat. Code, § 23223.) These questions need not be determined in this case for the reason that upon submission of any further proposed contract they need not recur.

The trial court in its findings of fact and conclusions of law declared the contract to be invalid on numerous additional grounds not carried into the judgment. Conclusions that the contract is uncertain, lacks mutuality, improperly delegates powers to the Secretary of the Interior, improperly prevents changes in the boundaries of the district, provides unreasonable security measures to the United States and other conclusions not necessary to the judgment are insufficiently supported when considered in connection with the views herein expressed as to the terms under which the parties may properly contract. [651]

In accordance with the foregoing it is concluded:

(1) That the plaintiff is an irrigation district duly organized, existing and operating as such under the laws of this state.

(2) That the title of the unappropriated domestic waters of the state in the State of California in trust for the water users of the state as beneficiaries and such waters are subject to appropriation under the laws of the state.

(3) That the United States as assignee of appropriative rights, as original appropriator thereof, and in the acquisition of other rights for the same purpose stands in the same relation to such beneficial owners as does the state, namely, as trustee for such beneficial owners and is answerable for the faithful performance of that trust.

(4) That in distributing the water contracted to be delivered to the District the United States does so as a purveyor of water at a price for the benefit of the water users of the District.

(5) That in so delivering the water to the District it is not competent for the United States or the District, either or both, to discriminate against the present or potential water users in the District on the basis of the amount of land owned by them, and that the 160-acre limitation contained in the original Reclamation Act is inapplicable to the subject matter of the contract and is improperly contained therein.

(6) That insofar as the contract provides for the constructure of words for the storage and distribution of water to and by the district, the relationship of the parties is that of contractor and contractee. Upon the completion

of the construction work the district is obligated under the law to pay for the same within 40 years in equal annual installments. Upon the completion of such payments the district is entitled to ownership of the works and property of the storage and distribution system free from any claims of the United States.

(7) That insofar as the contract provides for furnishing water to the district at a price the United States in acting as a purveyor of domestic waters of the state to the district, under federal law, is bound to observe and comply with the laws of the state with reference to the rights which are vested in the water users being served or entitled to be served. In this respect neither the state nor any of its agencies may contract or otherwise provide that the distribution of water [652] to those for whose benefit the right to the water was acquired may be arbitrarily discontinued.

The judgment is affirmed.

Schauer, J., Spence, J., and McComb, J., concurred.

GIBSON, C. J.—I dissent.

The holding of the majority opinion, which invalidates the 160-acre water limitation and other vital provisions of the contract between Ivanhoe Irrigation District and the United States Government, undermines the very foundation of federal reclamation policy and threatens to end the flow of federal funds into this state for reclamation and irrigation purposes at a time when the need for rapid development of our water resources is most critical. In reaching its conclusion the majority ignores the Irrigation

District Federal Cooperation Law of this state, relies on a statutory provision relating to the apportionment of water by districts which is inapplicable to water from a federal project, and enunciates a trust theory with respect to the ownership of water which has no basis in existing law, is unsound in principle, and will prove a serious obstacle in the resolution of state-wide problems involving the distribution and utilization of available water supplies for domestic and industrial purposes, the irrigation of land, and the production of power.

The Central Valley Project, which is now nearing completion, is a federal undertaking being built under the provisions of the national reclamation laws. Since the passage of the Federal Reclamation Act in 1902, the federal statutes have imposed a limit on the amount of irrigation water from federal projects which will be sold to any one landowner, namely, sufficient water to meet the needs of 160 acres of land. In California, by reason of our community property law, the limitation has been interpreted as allowing a man and a wife to buy sufficient water to supply 320 acres. (Graham, "*The Central Valley Project; Resource Development of a Natural Basin*" (1950), 38 Cal.L.Rev. 588, 608-611.) The restriction is not a limit on the amount of land a person may own. There is nothing in the governing federal statute, section 46 of the Omnibus Adjustment Act of 1926, which compels an individual who owns more than 160 acres to sell any of his land as a condition to receiving water sufficient for 160 acres. (44 U.S. Stats. 649, 43 U.S.C.A. § 423e (Supp. 1955).) He may retain all his land, receiving federal project water for the first 160 acres and irrigating the

remainder with whatever [653] other water may be available. It is only where he elects to request delivery of federal project water for the portion of his land in excess of 160 acres that he may be compelled to dispose of the excess land within a period of time fixed by the Secretary of the Interior. (See Graham, op. cit., 38 Cal. L.Rev. at pp. 606-608.)

The suggestion that the limitation may not have been intended to apply to lands held in private ownership prior to construction of a reclamation project flies in the face of specific language in the statute of 1902, which provides that no right to the use of water "for land in private ownership shall be sold for a tract exceeding 160 acres to any one landowner. . . ." (32 U.S. Stats. 389, 43 U.S.C.A. § 431.) Subsequent enactments contain similar provisions making specific reference to lands in private ownership. (36 U.S. Stats. 926 (1911), 43 U.S.C.A. § 524; 37 U.S. Stats. 266 (1912), 43 U.S.C.A. § 544; 38 U.S. Stats. 689 [1914], 43 U.S.C.A. § 418; 44 U.S. Stats. 649-650 (1926), 43 U.S.C.A. §423e (Supp. 1955); see Graham, op. cit., 38 Cal.L.Rev. at p. 616.). The Omnibus Adjustment Act 1926 expressly requires that contracts between the federal government and irrigation districts shall contain the acreage limitation as a condition to delivery of water from a federal project. (44 U.S. Stats. 649-650, 43 U.S.C.A. § 423e (Supp. 1955).) Thus the water limitation in the Ivanhoe contract follows the requirement of the federal statute, and, unless the statutory limitation may properly be construed as inapplicable in California, or is declared unconstitutional, or is removed from the law by congressional action, the representatives of the

federal government would have no power to negotiate a new contract without it.

Local irrigation districts are authorized by *state law* to enter into contracts with the federal government for a water supply *on terms required or authorized by federal law*. Direct authority for the action of the Ivanhoe district is found in the California Water Code which, since its adoption in 1943, has contained a chapter known as the Irrigation District Federal Cooperation Law (§ 23175 et seq.), most provisions of which are based on statutes originally enacted in 1917 (Stats. 1917, ch. 160). Section 23195 provides: "Districts may cooperate and contract with the United States under the Federal Reclamation Act of June 17, 1902, and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting cooperation." No delegation of legislative power is involved, and the state law clearly authorizes a contract which includes the provisions [654] of the Federal Omnibus Adjustment Act of 1926. Section 23196 of the Water Code authorizes districts to contract with the United States for a water supply and for acquisition and operation of works for irrigation.

With respect to the delivery, distribution, and *apportionment* of water among irrigators, section 23197 provides that district contracts with the federal government may include provisions for "(a) Delivery and distribution of water for the land in the district *under the relevant acts of Congress and the rules and regulations established thereunder*. . . ." and section 23200 provides, "All water, the right to the use of which is acquired by a district under any contract with the United States shall be *distri-*

buted and apportioned by the district in accordance with the applicable acts of Congress, the rules and regulations of the Secretary of the Interior thereunder, and the provisions of the contract, . . ." (Italics added.)

The majority takes the position that sections 23197 and 23200 must be construed as referring only to federal acts which do not conflict with state law and that the 160-acre limitation in the contract is invalid because it assertedly conflicts with section 22250 of the state Water Code which provides that water shall be apportioned ratably to each landowner on the basis of the last assessment against his land for district purposes.[1] The only reasonable interpretation of sections 23197 and 23200 is that the Legislature intended to authorize irrigation districts to enter into contracts with regard to the delivery, distribution, and apportionment of federal project water under the terms imposed by Congress as a condition to participation of the federal government in such contracts. The substance of section 22250 is contained in statutes enacted long before there was any water limitation in the federal reclamation law and before this state adopted the Irrigation District Federal Cooperation Law, the express purpose of which was to enable irrigation districts to secure the assistance of the United States Government in obtaining a water supply.

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[1]Section 22250 of the Water Code provides: "All water distributed by districts for irrigation purposes shall except when otherwise provided in this article be apportioned ratably to each landowner upon the basis of the ratio which the last assessment against his land for district purposes bears to the whole sum assessed in the district for district purposes." The substance of this section was included in the statutes of 1887, page 34, section 11. It also appears in the statutes of 1897, page 259, section 18.

Moreover, section 22250 is a *general* provision governing the distribution of irrigation water by districts, [655] and it is obviously qualified by the more recent provisions in sections 23197 and 23200 which relate *specifically* to the distribution and apportionment of federal project water under contracts between irrigation districts and the United States. As we have seen, sections 23197 and 23200 authorize the acquisition of a supply of water from the United States and direct that such water shall be distributed and *apportioned* by the district in accordance with the applicable acts of Congress, the rules established thereunder, and the provisions of the contracts. It follows that section 22250 cannot prevail here in the face of the water limitation which is required by the federal statute and which is thus authorized by sections 23197 and 23200.

It should also be noted in considering the effect of section 22250 that the statute should not be interpreted as fixing the exclusive method of apportioning available water among landowners in all irrigation districts in the state. Section 22250 appears in part 5 of division 11 of the Water Code relating to the powers and purposes of irrigation districts, and, to be at all intelligible, it must be read in connection with the provisions in part 5 and elsewhere relating to the financing by a district of the cost of constructing, maintaining and operating an irrigation system. Aside from incidental sources of revenue, there are two major methods of financing a district irrigation system under the Water Code: (1) ad valorem assessments on land in the district (§ 25500 et seq.; see §.25503); and (2) tolls charged to district irrigators for water delivered and other services (§ 22280) et seq). Where all district costs

are financed by levying ad valorem assessments on district land, the formula for water apportionment set out in section 22250 is clearly applicable and, when coupled with a provision such as section 22251 authorizing a landowner to assign any or all water apportioned to him, is reasonable. (*Fallbrook Irr. Dist. v. Bradley* (1896), 164 U.S. 112 162-163 [17 S.Ct. 56, 64, 41 L.Ed. 369].) But, once an irrigation system is in operation and the district, as it may, finances a share or all of its expenses by means of charging rates or tolls to actual water users, it seems clear that the formula for water apportionment in section 22250 is not intended to apply.

The uncertainties and inequities of the assessed-land-value formula for water apportionment were discussed in *Willard v. Glenn-Colusa Irr. Dist.* (1927), 201 Cal. 726, 741-743 [258 P. 959], where this court upheld the constitutionality of a 1911 statute providing that, "In lieu (either in part or in [656] whole) of levying assessments," irrigation districts have the power to raise all or part of the cost of operating and maintaining an irrigation system by means of charging rates or tolls to actual water consumers. (Cal. Irrig. Dist. Act, § 55, Stats. 1911, p. 516 [now Wat. Code, § 22280]; see Water Code, § 25655.) It was pointed out that the assessed-land-valuation formula for water apportionment created hardship and uncertainty for owners of land having a relatively low assessed valuation but containing crops which required more water than the land would be entitled to under the formula for water apportionment. "On the other hand," states the opinion, "by giving to the board of directors [of an irrigation district] the power to raise the whole or a part of the

cost of maintenance by tolls . . . every land owner of the district is given an opportunity to the extent of the water supply of the district of securing a definite, certain, and adequate supply of water for his lands." (201 Cal. at p.743.) While the question of water apportionment was not before the court, the language of the opinion clearly indicates that the formula for apportionment in section 22250 is not applicable in a situation where all or part of the district expenses are paid by means of charging rates or tolls to actual water users rather than by levying an ad valorem tax on district land.

Ivanhoe and most of the other irrigation districts in the state have adopted the practice of defraying costs of maintenance and operation by means of a combined system of levying assessments and charging rates or tolls to actual water users. (See *Willard v. Glenn-Colusa Irr. Dist.*, 201 Cal. at p. 744; Cal. Dept. of Pub. Works, Div. Water Resources, Bull. 21K, "Report on Irrigation Districts of California for the year 1939," pp. 8, 22; *ibid.*, Bull. 21P, "Report on Irrigation Districts in California, 1944-1950," appendix.) The services for which tolls and rates may be charged have been gradually extended. (See Wat. Code, § 22280.) Section 25655 provides that revenues derived from such rates or tolls may be spent for "district purposes" generally, and section 25219 authorizes their use to pay principal and interest on construction and refunding bonds. Hence most, if not all, district expenses may ultimately be financed not by assessments but by tolls charged to acual water and power consumers (see *Willard v. Glenn-Colusa Irr. Dist.*, 201 Cal. at pp. 740-741), and the Legislature could not have intended that the water

apportionment formula in section 22250 should be applicable under such circumstances.

Even if it be assumed, for the sake of argument, that there [657] is a conflict between section 22250 and the water limitation provisions of the federal statutes, the assertion by the majority that section 8 of the 1902 Reclamation Act provides for the supremacy of state law is untenable. Section 8 provides: "Nothing in this chapter shall be construed as affecting or intended to affect or in any way interfere with the laws of any State or Territory relating to the control, appropriation, use or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this chapter, shall proceed in conformity with such laws. . . ." However, as stated in *Nebraska v. Wyoming* (1945), 325 U.S. 589, 612, 615 [65 S.Ct. 1332, 89 L.Ed. 1815], section 8 will not be construed in every instance to mean that "where Congress has provided *a system of regulation* for federal projects it must give way before an inconsistent state system." (Emphasis added.) In the present case it is conceded that all water rights necessary to construction of the irrigation system have been acquired by the federal government in strict compliance with state law. The question before us is how a future supply of water from the completed federal project, *water not hitherto available*, shall be apportioned among district landowners. The 160-acre water limitation is clearly part of a "system of regulation" for federal projects within the meaning of the language quoted above from *Nebraska v. Wyoming* and thus appears to fall in that area where section 8 does not compel federal law to

give way before inconsistent state legislation; hence, if there is any state-recognized vested right which, in fact, conflicts with the acreage limitation, that right may be taken and compensated for by the federal government under its power of eminent domain. (See *United States v. Gerlach Live Stock Co.*, 339 U.S. 725, 733, 739 [70 S.Ct. 955, 94 L.Ed. 1231]; 32 U.S. Stats. 389, 43 U.S.C.A. § 421 (Supp. 1955); Rivers and Harbors Act of 1937, § 2, 50 U.S. Stats. 844, 850.) The question of compensation for loss or threatened invasion of a vested water right is not before us.

In holding the Ivanhoe contract invalid, the majority opinion invokes the aid of a "trust" theory assertedly based on general state law. The theory is that unappropriated domestic water is owned by the state in trust for water users and that the federal government can acquire no title to appropriative water rights free of such trust. For reasons hereinafter stated, it is my opinion that the trust theory is erroneous, but, if it be assumed that such a trust exists, it is clear, as indicated above, that there is nothing in the federal water [658] limitation which conflicts with state law, state water policy, or the best interests of the water users of the state, hence nothing which can be held to constitute a breach of trust.

There is no legal basis for the trust theory developed by the majority opinion. The Constitution and statutes of California reserve to the state considerable control over the use to which domestic water shall be put but contain nothing which creates a trust as to such waters. Section 3 of article XIV of the Constitution provides in substance that the water resources of the state must not be wasted,

that conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare, and that the right to the use or flow of water from any natural stream or water course in the state is limited to such water as shall be reasonably required for the beneficial use to be served. Sections 104 and 105 of the Water Code provide, in effect, that the state may regulate the use of water in the interest of the people. These and other general regulatory provisions apply to all water and water rights, whether riparian, appropriative or underlying, and whether privately or publicly owned.

The fact is that no declaration of trust is intended or effectuated by these general provisions enunciating water policy and providing for regulation, and they are in no way inconsistent with the existence of full title to water rights in the state or in private persons. While the use to which certain property may be put is controlled by state law, this does not mean that the owner thereof has something less than full title. It adds nothing to the strength and effectiveness of the laws regulating the use of water to say that they give rise to a trust relationship between the state and water users, but, to the contrary, such language threatens to confuse the development of our water law. The very use of the term "trust" draws with it the problem of applying settled trust principles to all water rights in the state, or at least to those acquired by appropriation—a problem which will certainly be attended by much uncertainty and difficulty.

Let us examine the trust theory as applied to the water rights involved in the present proceeding. The United

States is acquiring the water rights necessary to completion of the project by means of (1) assignment of applications for appropriation made by the state, (2) applications for appropriation made directly by the United States, and (3) purchase and exchange agreements made by the United States with certain private owners of riparian rights to divert the flow of the [659] San Joaquin River. (Graham, op. cit., 38 Cal.L.Rev. 596-600.) With regard to the first two, which relate to hitherto unappropriated water, even if it be assumed that all unappropriated water and water to which an appropriative right is not fully perfected belongs to the state, the ownership rights of the state do not differ from its rights in other state-owned property. Certainly the state has full title to the water and water rights which belong to it, and the people, acting through their representatives and within the limits of the Constitution, may dispose of it as they see fit. There may be occasions when the state would find it necessary to weigh the interests of a small group of potential water users against those of a much larger group, but it is difficult to see how this would be possible if all waters users of the state have equal rights as beneficiaries of the trust, and it would be even more difficult if, as suggested, the water users of a particular district are the sole beneficiaries of a trust in all waters which may ever be brought into the district. Application of a trust theory, in such a situation, would be an obstacle to the development of a water plan otherwise consistent with the best interests of a majority of the people. In the absence of any specific constitutional or statutory provision establishing a trust, it is improper for this court to restrict the power of

the state Legislature and the people as a whole by the device of declaring that such a trust relationship exists.

The series of cases beginning with *Merchants Nat. Bank of San Diego v. Escondido Irr. Dist.*, 144 Cal. 329 [77 P. 937], which are cited in support of the trust theory, are not in point because they deal not with the relationship of the state to domestic waters but rather with the functions of irrigation districts under statutes which, like section 22437 of the Water Code, specifically declared that such a district held its property "in trust" for the purposes of the district.

Nor is there anything in section 102 of the Water Code which supports the trust theory. The section reads, "All water within the State is the property of the people of the State, but the right to the use of water may be acquired by appropriation in the manner provided by law." Nothing in this language is inconsistent with the view that the state holds and can convey full and complete title to the water rights which it owns. And it is settled that the broad statement, "All water within the State is the property of the people of the State," has no application to privately owned water or water rights. *(San Bernardino v. Riverside,* 186 Cal. 7, 29-30 [198 P. 784].) The court in the San Bernardino case said [660] with respect to this broad language, "Taken literally, this would include all water in the state privately owned and that pertaining to lands of the United States, as well as that owned by the state. It should not require discussion or authority to demonstrate that the state cannot in this manner take private property for public use. . . . The constitution expressly forbids it. (Art. I, § 14.) The water that pertained

to or was contained in the lands of the state was already the property of the people when this [statute] was adopted. The statute was without effect on any other property." (186 Cal. 7 at pp. 29-30.)

With respect to the third method by which the United States is acquiring water rights, i.e., through purchase and exchange agreements made with private owners of riparian rights, it is clear that under the well-recognized principles set forth above such rights are not subject to a trust.

We have been cited to no case which holds that the state or private persons cannot hold full and complete title to water or water rights, and the constitutional and statutory provisions regulating the use of water which are relied on by the majority opinion do not, even by remote implication, require or justify the application of a trust theory in this field. Under existing law water may be used only for beneficial purposes, and all property of the state is held for the benefit of the people and is subject to use and disposition only in their best interest. The application of formal trust principles in this field thus appears to be totally unwarranted. Moreover, the ramifications of the trust theory as applied by the majority are infinite, technical and unpredictable and, as pointed out above, may prove to be a handicap in the future development of the water resources of this state.

The water rights acquired by the United States must, of course, be used in accordance with federal law. Under section 8 of the Reclamation Act appropriations may be made by the federal government, not for its own use, but only for the use of landowners; the right to the use of

water acquired under the act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right. (*Nebraska v. Wyoming* (1945), 325 U.S. 589, 614-615 [65 S.Ct. 1332, 89 L.Ed. 1815].)

The suggestion that the 160-acre limitation violates principles of equal protection and due process is without merit. This court cannot, of course, properly enter into a discussion of the wisdom of the limitation or the desirability of having it apply to the farming economy of the central valley in California. [661] These are matters for Congress to determine. The limitation has remained in the federal reclamation law for over 50 years and has survived numerous efforts to eliminate it.[2] (Taylor, "*The Excess Land Law: Execution of a Public Policy*" (1955), 64 Yale L.J. 477, 502-503.) It seems clear that the limitation upon the amount of water from a federal irrigation project to be sold to any one landowner creates a reasonable classification in furtherance of the purposes of the federal legislation. The federal government does not propose to recover the entire cost of building the Central Valley Project, and its construction and operation will result in a considerable subsidy to irrigators.[3] They will have the long term use of

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[2]In three instances Congress specifically exempted certain reclamation projects in Colorado, Nevada and California from the limitation, but all attempts to obtain such an exemption from the Central Valley Project have failed. (Taylor, op. cit., at pp. 502-503.)

[3]That portion of costs allocated to navigation and flood control (approximately 12 per cent of total estimated cost) is nonreimbursable. Of the costs for which the United States will be reimbursed, expenditures allocated to irrigation represent approximately 63 per cent of the total. Of the remainder, costs allocated to municipal and industrial water supply represent approximately 3 per cent of total reimbursable cost; that allocated to power develop-

federal money necessary to finance the construction of dams, storage and distribution systems for their benefit, free of interest, and will bear the ultimate cost of only a small part of the capital outlay allocated to irrigation construction. The water limitation was intended to prevent use of the reclamation service for speculative purposes, and it insures that the irrigators' subsidy and other benefits of federal irrigation projects will not go in disproportionate share to a few large landowners but will be confined to holders of moderate-size tracts of land sufficient to maintain one family; its purpose, in other words, is to distribute the government benefits in accordance with the greatest good for the greatest number of individuals. (Graham, op. cit., 38 Cal. [662] L. Rev. at 617.) Any vested rights of the landowners which are taken by the federal government must, of course, be compensated for, but the problems of compensation are not within the issues of this proceeding. It should be noted in this connection that none of the landowners in the district has riparian rights or perfected appropriative rights to the

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ment represents 33 per cent. (See note, 38 Cal.L.Rev. 728, 730, citing H.R. Doc. No. 146, 80th Cong., 1st Sess. 23 (1947).) Federal money expended for irrigation purposes is advanced free of interest over long periods of time, and, in the allocation of repayment obligations under plans formulated by the Bureau of Reclamation, irrigators are scheduled to repay the United States only 17 per cent of total reimbursable costs or, stated otherwise, approximately 35 per cent of the costs allocated to irrrigation. (Harding, "*Background of California Water & Power Problems*" (1950), 38 Cal.L.Rev. 547, 564.) The difference is proposed to be made up by users of project power and municipal and industrial water who are scheduled to pay rates designed to return approximately 82 per cent of total reimbursable cost. (Harding, op. cit., 38 Cal.L.Rev. at 564; Graham, op. cit., 38 Cal.L.Rev. at 622; Maass, "Administering the C.V.P." (1950), 38 Cal.L.Rev. 666, 672; Note, 38 Cal.L.Rev. 728, 730.)

waters involved here and that the land of Courtney McCracken, the individual defendant who is opposing confirmation of the contract, is located about 100 miles from the river from which such waters come.

We turn now to a consideration of the effect of the provisions in the Ivanhoe contract relating to the method by which the district irrigators shall reimburse the federal government for a part of the costs incurred in construction of the federal project. As noted earlier, the federal government proposes to recover from irrigators only a portion of the construction costs allocated to irrigation, and the federal reclamation laws now provide two methods by which the United States may recover this amount. Under section 9(d) of the Reclamation Project Act of 1939, based on provisions contained in earlier reclamation laws, an organization of irrigators and the federal government may enter into a repayment contract by the terms of which the government agrees to supply water at a rate to be fixed by the Secretary of the Interior, and the local organization agrees to repay a fixed sum representing its share of total construction costs allocated to irrigation. The Secretary fixes the sum of the organization's repayment obligation and sets the amount and number of annual installments sufficient to repay the sum within 40 years. It was found that this method lacked flexibility (see note, 38 Cal.L.Rev. 739, 740-741; Maass, op. cit., 38 Cal.L.Rev. 666, 672), and, in 1939, section 9(e) of the Reclamation Project Act created an alternative method for repayment by irrigators of the costs incurred by the federal government in constructing project units other than water distribution works located inside the

district.[4] Under contracts authorized by section 9(e) there [663] is no agreement by the irrigators to pay a definite sum within 40 years to cover costs of project construction but, instead, the federal government, under short or long term contracts for a period not exceeding 40 years, agrees to deliver water to the local organization at a rate fixed by the Secretary which is sufficient to include some return to the federal government on construction costs as well as costs of operation and maintenance.

In the present contract, costs incurred by the federal government in constructing a water distributing system *inside* the Ivanhoe district are covered by a 9(d) type provision. The contract does not contain any express provision for repayment of a share of the costs of constructing portions of the project located *outside* the district, such as Friant Dam and other units of the Central Valley Project. It provides merely that the United States is to furnish

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[4]Section 9(e) of the Reclamation Project Act provides as follows: "In lieu of entering into a repayment contract pursuant to the provisions of subsection (d) of this section to cover that part of the cost of the construction of works connected with water supply and allocated to irrigation, the Secretary, in his discretion, may enter into either short or long-term contracts to furnish water for irrigation purposes. Each such contract shall be for such period, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, due consideration being given to that part of the cost of construction of works connected with water supply and allocated to irrigation; and shall require payment of said rates each year in advance of delivery of water for said year. In the event such contracts are made for furnishing water for irrigation purposes, the costs of any irrigation water distribution works constructed by the United States in connection with the new project, new division of a project, or supplemental works on a project, shall be covered by a repayment contract entered into pursuant to said subsection (d)." (53 U.S. Stats. 1193, 61 U.S. Stats. 501, 43 U.S.C.A. § 485h(e) (Supp. 1955).)

water and the district is to pay for it at an acre-foot rate to be fixed annually by the Secretary, in no event in excess of $3.50 per acre foot. It is argued that the contract is defective because there is no specific requirement that a definite portion of that rate shall be allocated to repayment of the district's share of the costs of constructing project facilities outside the district. However, the applicable provisions of section 9(e) must be read into the contract, and they provide that the water rate fixed by the Secretary shall be such as will produce revenue sufficient to cover an appropriate share of annual operation and maintenance costs "and an appropriate share of such fixed charges as the Secretary deems proper, due consideration being given to that part of the cost of construction of works connected with water supply and allocated to irrigation."

It is obvious under section 9(e) that the water rate to be fixed by the Secretary under the Ivanhoe contract is to include a construction component and that revenue produced in excess of operation and maintenance costs is to be treated as repayment by the district of its share of construction costs, and it is immaterial that the contract does [664] not specifically so direct. Any question as to this interpretation of section 9(e) must now be regarded as settled by a recent statute providing, among other things, that in administering sections 9(d) and 9(e), the Secretary of the Interior shall "credit each year to every party which has entered into or which shall enter into a long-term contract pursuant to said subsection (e) so much of the amount paid by said party on or before the due date as is in excess of the share of the operation and main-

tenance costs of the project which the Secretary finds is properly chargeable to that party. Credit for payments heretofore made under any such contract shall be established by the Secretary as soon after the enactment of this Act as it is feasible for him to do so. After the sum of such credits is equal to the amount which would have been [sic] for repayment by the party if a repayment contract under subsection (d) had been entered into, which amount shall be established by the Secretary upon completion of the project concerned or as far in advance thereof as is feasible, no construction component shall be included in any charges made for the furnishing of water to the contracting party and any charges theretofore fixed by contract or otherwise shall be reduced accordingly." (Pub. L. No. 643, 84th Cong., 2d Sess. § 1(3) (July 2, 1956), 70 U.S. Stats. 483-484 (1956).)

It has been suggested that the 9(e) type of contract places the federal government in the role of a utility, a mere seller of water, and that district irrigators can never acquire permanent, appurtenant water rights thereunder. Such reasoning, however, overlooks the clear declaration which has appeared in the reclamation law since its enactment in 1902 that "the right to the use of water acquired under the provisions of this Act shall be appurtenant to the land irrigated, . . ." (32 U.S. Stats. 390, 43 U.S.C. § 372.) It is not reasonable to suppose that anything in the provisions of section 9(e) has in any way altered this basic purpose of the reclamation law. (*Cf. Nebraska v. Wyoming,* 325 U.S. 589, 614-615 [65 S.Ct. 1332, 89 L.Ed. 1815].) Moreover, it is now expressly directed that the Secretary of the Interior, in administering

sections 9(d) and 9(e), shall provide that the other party to any contract entered into pursuant to those sections "shall, during the term of the contract and of any renewal thereof and subject to fulfillment of all obligations thereunder, have a first right . . . to a stated share or quantity of the project's available water supply . . . and a permanent right to such share or quantity upon [665] completion of payment of the amount assigned for ultimate return by the party, subject to payment of an appropriate share of such costs, if any, as may thereafter be incurred by the United States in its operation and maintenance of the project works." The Secretary is expressly authorized to amend existing 9(e) contracts to make their language conform to this act. (Pub. L. No. 643, 84th Cong., 2d Sess., §§ 1(4), 2 (July 2, 1956), 70 U.S. Stats. 483-484.)

It has also been urged that neither section 9(e) nor the Ivanhoe contract contains a provision authorizing renewal of the water delivery provisions beyond 40 years and that the federal government is, therefore, under no obligation to continue to supply water beyond the 40-year period. The Department of the Interior has construed the reclamation law to mean that construction costs allocated to irrigation may be recovered by means of 9(e) contracts in any reasonable period within the useful life of the project, and the rates presently established for the Central Valley Project are calculated to effect full recovery of the costs of the major units by the year 2009. There is nothing in section 9(e) which requires the recovery of all construction costs within 40 years or which forbids the renewal of water delivery contracts for periods beyond that time. This interpretation must be regarded as settled by the

provision recently added to the reclamation law which authorizes the Secretary, if requested by the other party thereto, to amend existing contracts entered into under section 9(e) to include a provision for renewal. The Secretary is also authorized, upon request, to amend existing 9(e) contracts to include a provision contemplating conversion of the 9(e) contract into a 9(d) type repayment contract at a time in the future when the amount remaining due the United States by the other party is so small that is can probably be discharged in annual installments within the period fixed by law for 9(d) contracts, i.e., at present, 40 years. (Pub. L. No. 643, 84th Cong., 2d Sess. §§ 1(1), 1(2), 2 (July 2, 1956), 70 Stats. 483-484.)

There is no merit in the argument that the contract is defective because it fails to state that, upon repayment of all construction costs, the district shall succeed to whatever title the United States has acquired to property in the district in connection with the project. The contract provides that "Title to all of the Project works, including the distribution system constructed by the United States pursuant to this contract, shall be and remain in the name of the [666] United States until otherwise provided for by the Congress, notwithstanding the transfer hereafter of any such works to the District for operation and maintenance." This provision is required by the reclamation law. (32 U.S. Stats. 389, 43 U.S.C.A. § 498.) There is no reason why the parties cannot agree that the title to the project works shall remain in the United States after repayment of construction costs. The provision is a reasonable method of assuring that the various properties of the project shall remain devoted to the purposes for which

the federal funds were expended, and, in the absence of a showing that the provision violates the Constitution, or a statute or some rule of policy, we should not hold it to be invalid. There is nothing in the contract or in the reclamation law which precludes Congress from transfering title to project property to the district after all terms of the contract are performed, and it will be up to the district to press its claim thereto at such a time. It is not the business of the courts to determine whether the contract provision is a wise one from the standpoint of the district; the question is one of validity.

The conclusions expressed above make it unnecessary to consider whether the Second Validating Act of 1949 (Stats. 1949, p. 1511) is applicable to the contract.

I would reverse the judgment.

Traynor, J., concurred.

CARTER, J.—I dissent.

The majority opinion is based upon at least two fundamental misconceptions of law. First, this case does not involve water rights in the ordinary sense. That is, it does not involve questions relating to the right to divert and use water from a stream or other source; questions of priority or riparian ownership or beneficial use of water as defined in our statutes and court decisions. It involves the validity of a contract between the government of the United States and an irrigation district organized and existing under the laws of this state.

Second, even if the law relating to water rights were involved, the theory enunciated in the majority opinion of

title to all domestic water being held in trust by the state is fundamentally unsound and unsupported in law, tradition, history, public policy, practice or human experience.

A brief statement relative to the origin and development of the Central Valley Project and its objectives will demonstrate [667] that the contract here involved was entered into in accordance with federal and state law and is therefore valid.

The Central Valley Project was originally authorized by the State of California for construction by its Water Project Authority under the Central Valley Project Act of 1933 (Cal. Stats. 1933, § 1042, p. 2643, effective after referendum action, January 13, 1934, now Wat. Code, § 11100 et seq.). No action was taken by the Water Project Authority for the construction of this project, but on September 10, 1935, President Roosevelt, by executive order, transferred $20,000,000 under the Federal Emergency Relief Appropriation Act of 1935 to the Department of the Interior, Reclamation Service, for construction of Friant Dam on the San Joaquin River. The project was thereafter constructed as a reclamation project pursuant to the Reclamation Act above referred to and acts amendatory thereto. There is no question but that the United States government complied with all of the provisions of the law of California in the acquisition of the water rights incident to this project and that the construction, operation and maintenance of the storage dams and facilities are in every respect in accordance with the laws of this state. It is likewise clear that this project was constructed in accordance with the laws of the United States and that the authority exercised by the Reclamation Service in storing

and distributing the water developed by said project is strictly in accord with both the laws of the United States and of the State of California. Such being the case, we must look to these laws to determine whether or not the state agency involved in this case had the authority to enter into a contract with the United States government for the purchase of the water developed by said project. There is no question but that both the federal and state laws authorize the execution of such contracts. So far as our state law is concerned, the contract here involved is expressly authorized by the Irrigation District Federal Cooperation Law (Wat. Code, § 23175 et seq.) of this state which authorizes a state agency to contract with the United States for a water supply (Wat. Code, § 23196a), and to deliver, distribute, and apportion this supply as required by federal law (Wat. Code, §§ 23197a, 23200).

The contract here involved is also expressly authorized by the federal laws relating to the reclamation of arid lands of the west, and particularly by section 9c of the Reclamation Project Act of 1939 (33 Stats. 1939, p. 1196, 43 U.S.C., § 485h(c) 1946 F.R.L.A. 600), and section 46 of the Omnibus Adjustment Act of 1926 (46 Stats. of 1926, p. 649, 43 U.S.C., [668] § 423e 1946 F.R.L.A. 318). These laws, in themselves, and in conjunction with the state laws do not deprive anyone of property without due process of law, nor deny to anyone equal protection of the laws, and do not derogate from the powers reserved to the state under the Tenth Amendment to the Constitution of the United States.

There is no provision of law in this state which imposes any restriction against an agency of this state from en-

tering into a contract with the United States involving the subject matter of the contract here under consideration. The 160-acre limitation for the use of water from a reclamation project has been in existence since 1902 and this provision has never been successfully assailed as impinging any constitutional right of anyone who has been called upon to comply with the provisions of the Reclamation Act.

We are not here concerned with the social and economic philosophy which was the background of the inclusion of the 160-acre limitation in the Reclamation Act. It is not our province to declare whether this provision of law is good or bad. It was adopted by Congress after many years of debate, and although numerous assaults have been made against it, Congress has not only refused to delete it from the act but has on two occasions, once in 1926 and again in 1939, expressly reaffirmed their belief in the wisdom of this provision. Neither has the Legislature of California seen fit to disapprove the inclusion of this provision in the contracts which it has authorized state agencies to negotiate with the United States government for the distribution of water from reclamation projects. The fact that in the case here involved the inhabitants of the district which negotiated the contract containing the 160-acre limitation, voted overwhelmingly in favor of said contract, should be persuasive evidence that the provision is not detrimental to the social and economic welfare of the people affected by it.

With respect to the title to the unappropriated waters of this state, the statutes of this state declare that "The sovereignty of the State resides in the people thereof. . . ."

(Gov. Code, § 100), and that "All property within the limits of the State, which does not belong to any person, belongs to the people" (Gov. Code, § 182). Since the power of sovereignty is vested in the people, and all property within the limits of the state, which does not belong to any person, belongs to the people; it follows that the unappropriated waters of the state are owned by the people under their power of sovereignty. The people have, through the Constitution, dele- [669] gated this power to the executive and legislative branches of the government. The Legislature of this state has provided by law a comprehensive system for the appropriation, distribution and use of the waters of this state, including the impounding and storage of the seasonal run-off for distribution and use for beneficial purposes. I refer to the Water Code of this state adopted by the Legislature in 1943 which contains the following provisions (among others) with respect to the ownership, appropriation and use of the domestic waters of this state:

"102. All water within the State is the property of the people of the State, but the right to the use of water may be acquired by appropriation in the manner provided by law.

"103. In the enactment of this code the Legislature does not intend thereby to effect any change in the law relating to water rights.

"104. It is hereby declared that the people of the State have a paramount interest in the use of all the water of the State and that the State shall determine what water of the State, surface and underground, can be converted to public use or controlled for public protection.

"105. It is hereby declared that the protection of the public interest in the development of the water resources of the State is of vital concern to the people of the State and that the State shall determine in what way the water of the State, both surface and underground, should be developed for the greatest public benefit.

"106. It is hereby declared to be the established policy of this State that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation." (Wat. Code, §§ 102, 103, 104, 105, and 106.)

In the adoption of the state Water Code, the Legislature has made it abundantly clear that anyone complying with the laws of this state may be granted a right to appropriate and use any unappropriated water which he can put to a beneficial use. The government of the United States, acting under valid acts of Congress, may become an appropriator of any of the unappropriated waters of this state the same as any other public or private corporation or individual who complies with the law of this state governing the appropriation and use of such waters.

After reviewing the history of the water law of California the majority opinion states: "It is therefore concluded that the title to the unappropriated waters of the state is in the State of California in trust for the use and benefit of the [670] beneficiaries of that trust; that the trust character of that title is anchored in the state by constitutional provisions, by statutes enacted in furtherance thereof, and by the decisional law of the state. . . ." The majority opinion does not cite any constitutional or statutory provision

or any decision of any court of this state which supports the foregoing statement. On the contrary there is not a single constitutional or statutory provision or decision of any court of this state from which it is possible to draw such conclusion. The words trust or trustee or trust relationship do not appear in any constitutional or statutory provision or any court decision of this state dealing with the title or ownership of water by the State of California.

The reasoning of the majority with respect to the right of the beneficiaries under the so-called trust to the beneficial use of water seems incoherent. It proceeds from the premise "... that the title to the unappropriated domestic waters of the state is in the State of California in trust for the use and benefit of the beneficiaries of that trust;... that the beneficiaries of that trust are the water users of the state who in a general sense *constitute all of the people of the state;* that the beneficiaries of the trust relationship whose rights are here under consideration are *those present or prospective users* who individually or in properly classified groups bring themselves within the orbit of the state law under which they may be in position to demand benefits without discrimination, and that within that category are the landowners of the District." (Emphasis added)

Under the foregoing line of reasoning no vested right may ever be acquired by any individual or group of individuals to appropriate and use a given quantity of water for a beneficial purpose even though they have complied with all the provisions of the statutory law of this state, as the state would have no power to grant a specific right to any individual unless every other individual who may

have a use for water has received his share. The following practical example may demonstrate the absurdity of the reasoning of the majority. It is a matter of common knowledge that there are vast areas of land in this state which have no available water supply. Under existing law, however, an individual or group of individuals may acquire a right to develop a water supply from unappropriated waters (see Wat. Code, §§ 1252, 1252.5, 1253, 1350, 1375, 1380, 1390, 1450, 1455) by pumping from wells or storage of run-off which may be adequate to supply the limited areas owned by those who develop such supply. However, [671] there may be other areas in the same locality for which no water is available because of the prior appropriation and development of the supply made available to those who first obtained a permit and proceeded with the installation of facilities for the appropriation and use of the entire available supply. It is obvious that under the trust theory advanced in the majority opinion, the state could not grant a right to one user which would deprive another of his share even though the first appropriator was devoting all of the available water to a beneficial use on his land. In this connection the majority opinion states, "The trust relationship existing between the state and the beneficiaries of the trust must therefore be kept in mind in connection with any transactions between the state or any of its agencies and outside parties. It follows that when an outside party, such as the United States, by contract, legislation or otherwise, steps into the shoes of the state to administer that trust by the development, conservation and distribution of the trust res, it is bound by the same rules of law as surround and govern the State of California or any other purveyor of water of the state for the benefit of

its water users. *The state may not therefore lawfully dispossess itself of the title to such water and may not surrender its control of the same in any way inconsistent with the administration of the trust under which the title is held. The state by general law may and has in the main prescribed the terms and conditions under which the several classes of water users may become secure in their right to the water and use thereof.*" (Emphasis added.) But the state has not classified water users nor prescribed the terms and conditions under which they may become secure in their right to the water and use thereof on any theory of trust relationship between it and the users. On the other hand the state has provided that an individual or group of individuals may obtain a permit to appropriate and use a specific quantity of water, and to the extent that such appropriation is prior in time, it is prior in right to other appropriations and constitutes a vested right protected by the due process clauses of both the state and federal Constitutions. (See Wat. Code, §§ 1450, 1455; *Temescal Water Co.* v. *Department of Public Works*, 44 Cal.2d 90 [280 P.2d 1].) In this connection, the Water Code provides (see Wat. Code, § 1252.5) that the government of the United States may acquire a water right by appropriation in the same manner as any individual or corporation. The foregoing provisions of the Water Code are in clear conflict with the so-called trust [672] theory advanced in the majority opinion. It should be perfectly obvious that the provisions of the Water Code above cited which confer a vested right upon appropriators of water, including the United States, cannot stand in the face of the holding of the majority here that the state holds the title to all the

unappropriated domestic waters of the state in trust for all of the water users of the state, as it cannot be denied that the effect of the provisions of the Water Code which authorize the granting of permits for the appropriation and use of the unappropriated waters of the state by individuals and private and public corporations, including the United States, is to deprive some of the beneficiaries of the trust of their share of the trust res—water—by the first come, first served policy with respect to the appropriation of the unappropriated domestic waters of the state as declared in the Water Code. The majority opinion expressly states that "The state may not therefore lawfully dispossess itself of the title to such water [unappropriated domestic water] and may not surrender its control of the same in any way inconsistent with the administration of the trust under which the title is held." The inevitable conclusion which must be reached from the reasoning of the majority opinion is that all unappropriated domestic waters of the state are held in trust for the use of all of the people of the state who are in a position to put their respective shares of the water to a beneficial use and that such beneficiaries have the right to demand and receive their respective shares of such water as beneficiaries of said trust. In this connection the majority states "It is they who are in a position to avail themselves of the right to beneficial use of the waters to be purveyed and to demand indiscriminate service."

It must be remembered that there is no provision in either the state or federal law which purports to allocate any portion of the water developed by the Central Valley Project to the plaintiff in this action or to any other

agency, group or individual. The allocation and distribution of said water is a matter to be provided for by contract entered into pursuant to the provisions of the federal and state laws on this subject. After reviewing its trust relationship theory the majority opinion states "There is nothing in the foregoing declaration [trust relationship between state and present or prospective water users] which interjects anything new into the water laws of this state. It is but a recognition and redeclaration of existing fundamental concepts of this phase of our law."

If the majority is aware of any prior declaration of this [673] or any other court of this state invoking the trust relationship concept to state-owned water rights it has failed to disclose the source or location of such declaration. While it may not be new to the majority, it is both new and novel to me and is basically unsound.

The only authorities upon which the majority rely for the so-called trust relationship are the following: *Merchants Nat. Bank* v. *Escondido Irr. Dist.*, 144 Cal. 329 [77 P. 937]; *Tulare Irr. Dist.* v. *Collins*, 154 Cal. 440 [97 P. 1124]; *Hall* v. *Superior Court*, 198 Cal. 373 [245 P. 814]; *Lindsay-Strathmore Irr. Dist.* v. *Wutchumna W. Co.*, 111 Cal.App. 688 [296 P. 933]; *Allen* v. *Hussey*, 101 Cal.App.2d 457 [225 P. 674]. None of these cases even mentions the question of title or ownership of the unappropriated domestic waters of the State of California. They deal exclusively with the rights of landowners within irrigation districts to receive their respective proportions of the water which the irrigation district has acquired for the use and benefit of the lands within the district. It is obvious that in administering the distribution of water to land-

owners within an irrigation district, the district is acting as a trustee and the landowner a beneficiary, as the landowner supplies the funds which enable the district to acquire and distribute the water, and the district should be required to distribute available water to landowners on a fair and equitable basis so that there will be no discrimination between them. It is clear that the landowner within an irrigation district has no property right in any particular quantity of water, as the title to the water is vested in the irrigation district which is required to distribute it to the landowners in accordance with the latters' needs. The situation with respect to the ownership of unappropriated domestic water by the state is entirely different. The state does not undertake to distribute any particular quantity of water to anyone. It has established an agency (the Division of Water Resources) to determine the quantity of water available and to grant permits for the use of such water to those making application therefor in accordance with the law. There is no provision of law requiring the Division of Water Resources to supervise the distribution of water covered by permits issued by said division, and if the right of the permittee is violated by a third person, he must resort to the courts for the enforcement of his right. The Water Code makes it crystal clear that anyone complying with its provisions may acquire the right to use water by appropriation in the manner provided by law. [674] (See Wat. Code, § 102.) The right so acquired is a property right and protected by the due process clauses of both the state and federal Constitutions.

The concept of the trust character of title to the domestic waters of this state being vested in the State of Cali-

fornia as enunciated in the majority opinion is clearly out of harmony not only with the Constitution and statutes of this state but with the decisional law as well. This is demonstrated by the discussion in the majority opinion relative to the development of the law relating to water rights in this state. At the beginning of this discussion the majority opinion refers to the case of *Lux* v. *Haggin* decided by this court in 1886 (69 Cal. 255). Referring to the holding of this court in *Lux* v. *Haggin, supra,* the majority states: "The doctrine was declared to be that the owner of real property bordering such a river or stream had a right co-existent with the same rights of other landowners on the stream, to the use of its waters and the flow thereof as it was 'wont to do in the course of nature' unimpaired in quality and undiminished in quantity. This right was declared by this court in *Lux* v. *Haggin, supra,* 69 Cal. 255, to be a right appurtenant to the land, in fact a part and parcel of the land itself. Under this doctrine the riparian owner had the right to insist that the full flow of the stream continue to pass his land in its natural state whether he needed the water or not. This riparian right as so defined was declared by this court to be a property right which vested in the riparian owner and as such was protected by the state and federal Constitutions. It could not be limited or impaired without due process of law and without just compensation." It is conceded by the majority that the rule announced in *Lux* v. *Haggin, supra,* continued to be the rule of decision in this state until 1933 when this court was persuaded by opinions prepared by the facile pen of Mr. Justice Shenk (see *Gin S. Chow* v. *City of Santa Barbara,* 217 Cal. 673 [22 P.2d 5]; *Peabody* v. *City of Vallejo,*

2 Cal.2d 351 [40 P.2d 486]) to hold that this doctrine was no longer applicable and was supplanted by the doctrine of reasonable use even as against appropriators. It should be noted that the theory of the trust character of title to water rights had not then been conceived by Mr. Justice Shenk as no mention was made of this theory until now. It would seem, however, that if the state ever held the title to the domestic waters of this state in trust, it did so from the beginning; that is, from the time the state was admitted into the union and became an [675] entity capable of exercising ownership and possession of property. The majority here do not claim that this trust theory of title to water rights originated with the adoption of the Water Commission Act in 1913 or the adoption of the amendment to the Constitution in 1928 (Cal. Const., art. XIV, § 3) or with the sweeping pronouncements contained in the decisions of this court in the Gin Chow and Peabody cases. This theory must have originated and come into being when the Constitution of 1849 was adopted and existed at the time this court decided *Lux* v. *Haggin, supra,* in 1886, and during all of the intervening years when this court was applying the doctrine announced in *Lux* v. *Haggin.* Such being the case, can it be said that the doctrine of *Lux* v. *Haggin* and all of the other decisions of this court in water rights cases between 1886 and the decision of the Gin Chow case in 1933 is compatible with the theory that the State of California held the title to the domestic waters of the state in trust for water users who are said to be the beneficiaries of the so-called trust. The answer is obvious. The declaration of the riparian right doctrine in *Lux* v. *Haggin, supra,* is clearly repugnant to any trust concept.

Under this doctrine the riparian owner got title to the riparian right when a patent was issued to him for his riparian land whether that patent came from the state or federal government. Under this doctrine the right to have the full flow of the stream past his land unimpaired in quality and undiminished in quantity except by the reasonable use of another riparian owner, was a vested right, a part and parcel of the land itself and protected by the due process clauses of both the state and federal Constitutions. (*Miller & Lux* v. *Madera Canal etc. Co.*, 155 Cal. 59 [99 P. 502, 22 L.R.A.N.S. 391].) While the majority opinion does not purport to express or declare what was the genesis of the so-called trust title theory, there are declarations in said opinion from which an inference might be drawn that the Water Commission Act plus the 1928 constitutional amendment plus the doctrine announced in the Gin Chow and Peabody cases gave rise to such theory. After discussing the effect of the foregoing the majority opinion states: "It is thus apparent that the more recent changes in the constitutional and decisional law of this state, had the effect of making available for beneficial uses by appropriation and other means great volumes of unappropriated waters of the state." I have difficulty attempting to rationalize the foregoing statement. If the state ever had title to the waters referred to, it never [676] lost it. If it did not have title to said waters, the title must have been vested in others. If it was vested in others, the only manner in which it could acquire title thereto was by purchase or the exercise of its power of eminent domain unless the users voluntarily abandoned the waters and made them available for appropriation and use by others. Certainly,

the Legislature could not by statute nor the people by the adoption of a constitutional amendment nor could this court by a valid rule of decision divest an owner of a valid title to a water right any more than any of those departments of government could validly divest an owner of private property of his title to lands or personal belongings. What really happened in this melee of incongruity is that this court saw fit to change the riparian right doctrine from that announced in *Lux* v. *Haggin*, *supra*, to the so-called reasonable use doctrine as announced in the Gin Chow and Peabody cases by holding that the *Lux* v. *Haggin* doctrine had become outmoded and was not adapted to the arid conditions existing in this state. What this court did in the said last mentioned decisions had the effect of overruling all of the former decisions of this court from *Lux* v. *Haggin* in 1886 to *Herminghaus* v. *Southern Calif. Edison Co.*, 200 Cal. 81 [252 P. 607], decided in 1926, as it is obvious that said rule could not be changed without overruling said cases which had held that the riparian right doctrine as announced in *Lux* v. *Haggin* was a vested property right protected by the due process clauses of both the federal and state Constitutions. What Mr. Justice Shenk did in the Peabody and Gin Chow cases was simply to ignore the holding of this court in *Miller & Lux* v. *Madera Canal etc. Co.*, 155 Cal. 59 [99 P. 502], by holding that the doctrine of reasonable use even as against an appropriator did not violate the due process clauses of the federal and state Constitutions. I have heretofore stated that I would have arrived at the same conclusion by forthrightly overruling all of the decisions of this court applying the *Lux* v. *Haggin* doctrine as being unsound in prin-

ciple and based upon a misapprehension of the law applicable to water rights (see dissenting opinion in *City of Pasadena* v. *City of Alhambra,* 33 Cal.2d 908, at p. 938 [207 P.2d 17]).

The majority opinion correctly states that the decision of this court in *Lux* v. *Haggin, supra,* was based upon the declaration contained in section 4468 of the Political Code which provided at that time as follows: "The common law of England, so far as it is not repugnant to or inconsistent [677] with the Constitution of the United States, or the Constitution or laws of the State of California, shall be the rule of decision in all the courts of this state." But the majority opinion is in error when it states: "This court took the general language of that declaration by its four corners and applied the English common law doctrine of riparian rights to the ownership, control and use of the waters of the rivers and streams of the state." While it is true that the majority of this court in its opinion in *Lux* v. *Haggin, supra,* assumed that the riparian right doctrine as there declared was based upon the common law of England, such assumption was erroneous and without foundation in fact or law as there now appears to be no doubt that the riparian right doctrine was not a part of the common law of England but a part of the civil law and the first reference to it is contained in the Code Napoleon, the French Civil Code, in the year 1804. The first decision announcing the riparian right doctrine in any common law country was the case of *Tyler* v. *Wilkinson,* 4 Mason 397 [F. Cas. No. 14312], which was written by Mr. Justice Story of the Supreme Court of the United States while sitting as a circuit judge in the Rhode Island circuit in the

June term of 1827. The first case involving the riparian right doctrine in England was decided in 1849 and referred to *Tyler* v. *Wilkinson* as its authority. My authority for the foregoing statement is an article written by Mr. Samuel C. Wiel of the California Bar, an eminent authority on water law, author of the text "Water Law in the Western States" and various other publications on water law. This article was published in the Harvard Law Review, Volume XXXIII, Number 2, in 1920.

The fallacy underlying the basis for the decision of this court in *Lux* v. *Haggin, supra,* has permeated numerous decisions of this court and is no doubt the reason for much of the confusion which has been brought about as the result of the judicial fumbling and bungling of the water laws of this state (see dissenting opinion in *City of Pasadena* v. *City of Alhambra,* 33 Cal.2d 908, at 938 [207 P.2d 17]).

Returning to the so-called trust title theory of water rights, the majority opinion does not purport to delineate the terms of the so-called trust. But in view of the position taken by the majority that the domestic waters, the title to which is held in trust by the state, must be administered in accordance with the statutory and decisional law of the state, we may assume that such law may be resorted to for the purpose of ascertaining the terms of the trust. If such is [678] the case, it would seem that the terms of such trust may be changed at every session of the Legislature or during every period that a new group of justices constitutes a majority of the Supreme Court of this state. In other words this so-called trust character of the title to the domestic waters of this state, has no stability whatsoever

and may be changed from decade to decade or from year to year as may be dictated by the political fortunes of those who declare and administer it.

The record in this case discloses that in the construction and operation of the units of the Central Valley Project the United States through its Bureau of Reclamation has acquired by purchase and the exercise of the power of eminent domain vast areas of privately owned lands and numerous water rights some of which were based upon filings of applications for the appropriation of unappropriated waters by the State of California and various agencies of the state such as irrigation districts and municipal water districts and also from many private individuals and corporations which claimed to own vested rights in the domestic waters of this state both as appropriators and riparian owners. Included among the agencies from which such rights were acquired by the United States are Madera Irrigation District, Tranquility Irrigation District, James Irrigation District, and the following private or quasi-public corporations; Miller and Lux, Inc., Gravelly Ford Canal Company, Kings River Canal and Irrigation Company, Columbia Canal Company, San Luis Canal Company, Firebaugh Canal Company, Gerlach Live Stock Company, Hollister Land and Canal Company, Chowchilla Farms, Inc., Edison Securities Company and many other corporations and individuals. While the consideration paid by the United States for the rights acquired from the above public agencies, corporations and individuals is not disclosed, it appears, that the sum of $2,450,000 was paid to Miller and Lux, Inc., for title to all of the waters of the San Joaquin

River in excess of flows specified in schedules attached to the agreement of purchase (see Report Prepared Pursuant to Senate Concurrent Resolution Number 48, Legislature of 1951, introduced in evidence as Water Project Authority's Exhibit N.

If the majority is right in holding that the title in all of the water rights acquired by the United States in connection with the construction, development and operation of the Central Valley Project is held in trust for the water users of this state, such holding must be based upon the premise [679] that all of the rights so acquired were held in trust by the owners of such rights who conveyed the same to the United States. This would apply to the vast riparian right holdings of Miller and Lux, Inc., which were adjudicated by numerous decisions of this court as being a part and parcel of the lands of said corporation, title to which was vouchsafed by the due process clauses of both the federal and state Constitutions.

While there can be no question that the Supreme Court of the United States has held in many cases that the matter of ownership, distribution and use of water, with few limited exceptions, is within the jurisdiction of the state and the determination of the right to appropriate and use water is controlled by state law (*Kansas* v. *Colorado*, 206 U.S. 46, 93-94 [27 S.Ct. 655, 51 L.Ed. 956]; *United States* v. *Arizona*, 295 U.S. 174 [55 S.Ct. 666, 79 L.Ed. 1371]; *United States* v. *Gerlach Live Stock Co.*, 339 U.S. 725 [70 S.Ct. 955, 94 L.Ed. 1231]), recent decisions of that court make it clear that there are certain fields in which the federal law prevails over the state and

that the state's control of the waters within the state is not complete and unqualified (see *United States* v. *San Francisco*, 310 U.S. 16 [60 S.Ct. 749, 84 L.Ed. 1050]; *First Iowa Hydro-Electric Coop.* v. *Federal Power Com.*, 328 U.S. 152 [66 S.Ct. 906, 90 L.Ed. 1143]; *Henry Ford & Son* v. *Little Falls Fibre Co.*, 280 U.S. 369 [50 S.Ct. 140, 74 L.Ed. 483]; *Federal Power Com.* v. *Niagara Mohawk Power Corp.*, 347 U.S. 239 [74 S.Ct. 487, 98 L.Ed. 666]; *Federal Power Com.* v. *State of Oregon*, 349 U.S. 435 [75 S.Ct. 832, 99 L.Ed. 1215]; *State of Wash. Dept. of Game* v. *Federal Power Com.*, 207 F.2d 391; *Alabama Power Co.* v. *Gulf Power Co.*, 233 F. 606; *California Oregon Power Co.* v. *Superior Court*, 45 Cal.2d 858 [291 P.2d 455]. It seems clear, however, that in the construction and operation of the units of the Central Valley Project the United States proceeded under the provisions of the Reclamation Act (43 U.S.C., § 731 et seq.) and with full recognition of the water rights there involved having valid existence under state law (*United States* v. *Gerlach Live Stock Co.*, 339 U.S. 725 [70 S.Ct. 955, 94 L.Ed. 1231]).

It is a matter of common knowledge that there are thousands, probably millions of acres of land in California which are still in government ownership and vast water resources exist in these regions. As I read the recent decisions of the Supreme Court of the United States, I have little doubt that under the rules of law announced therein, the federal govern- [680] ment may lawfully exercise exclusive control over the water resources which exist on lands and in areas owned and controlled by it. I refer to the national forests and the undeveloped areas of

this state which remain almost exclusively in government ownership and control.

We may take judicial notice that the federal government is now engaged in the construction of another large reclamation project which will be annexed to and contribute to the water resources of the Central Valley Project. I refer to the Trinity River Project which contemplates the construction of a dam 465 feet high on the Trinity River near Weaverville in Trinity County, which will impound the run-off of the Trinity River watershed and will have a capacity of approximately 2,500,000 acre feet of storage. More than 75 per cent of the 450,000 acres of land embraced within this project is owned by the United States government. When this dam is completed and the water therefrom discharged into the Sacramento River basin, the United States government will no doubt proceed to dispose of it in accordance with the laws of the United States including the 160-acre limitation in the Reclamation Act. It does not seem reasonable and logical to me that this court should say to the government of the United States that you cannot impound the waters of the Trinity River basin which are now running to waste and causing immeasurable flood damage, and divert it into areas where it may be used for the irrigation and improvement of arid lands and other useful purposes unless you eliminate from your contracts for the distribution of this water the 160-acre limitation which the Congress of the United States has said must be included in such contracts. Yet, this requirement must flow from the holding of the majority here even though the water made available by said project is produced from a drainage basin, 75 per cent of the area of which is owned by the United States.

It is my view that when the United States constructs a reclamation project by impounding water in compliance with both state and federal laws, it is the owner of that water and may dispose of it as provided by federal law, and it may exact any condition which the federal law sees fit to provide for in connection with the sale and distribution of that water. Of course this does not mean that Congress could impose restrictions in conflict with constitutional principles. It may be that the State of California by legislative action could so restrict the appropriation of its water resources that the federal government would not see fit to develop further reclama- [661] tion projects in this state, but so long as the federal government complies with the law of the State of California in the construction, operation and maintenance of its reclamation projects, I am disposed to hold that it may sell and distribute the water developed by said projects under contracts of the type here involved which, in my opinion, do not violate any provision of the Constitution and laws of this state or the Constitution and laws of the United States.

We have here no controversy between the State of California and the United States. The attorney general of California takes the position that the contracts here involved are valid. The agencies here involved have all accepted and approved these contracts both by their governing boards and the inhabitants of the districts affected thereby. The validity of these contracts is challenged only by individuals who claim that their property rights will be affected thereby. I do not agree.

At the outset of this opinion I stated that the majority opinion is based upon two fundamental misconceptions. I

then called attention to the fact that the majority opinion is written upon the assumption that this is a case involving water rights and that the State of California holds title to all of the domestic waters of the state in trust. I think it proper to add another fundamental misconception on which the majority opinion is based; that is, that the so-called 160-acre limitation is in effect an excess land law. With this concept I do not agree. In an excellent article by Professor Paul S. Taylor, Professor of Economics, University of California, printed in the Yale Law Journal, Volume 64, Number 4, February, 1955, entitled "*The Excess Land Law: Execution of a Public Policy*," he states in part:

"A great confusion pervades discussion of the excess land law and threatens disaster to public policy regarding disposing of public domain. Congress has declared this policy to be the widespread distribution of benefits and the curbing of monopoly and speculation, whether the domain is in form of land, water, or both. The excess land provision of the National Reclamation Act of 1902 is a means of attaining these ends in the public disposal of water.

"General and legal acceptance have joined to confer authority upon either of two descriptive titles—'excess land law' or '160-acre limitation'—both of them equally deceptive. The law is not really a *land* law, and it places no limitation whatsoever upon the *acreage* a man may own. The restraint is neither upon acreage of land nor upon water, but upon the [682] *individual*. No individual is entitled to receive more than an equitable share of the water distributed under reclamation law. The maximum *indi-*

vidual share is set at an amount of water necessary to irrigate 160 acres of land.

"Among the sources of this confusion of language, two are 'accidents'—one physical, the other historical. The first is the unequal geographical distribution of water. Water and land are two halves of a productive whole everywhere. East of the one hundredth meridian nature has joined them, and any description or analysis of agricultural land can assume water. West of the hundredth meridian water and land are separate. Man-made works—reservoirs and canals—are required to join them. Water and land, therefore, must be treated separately, whether as physical entities, objects of private ownership, or the concern of public policy. Water cannot be assumed as the natural, inevitable and permanent adjunct of land. *Land* ownership does not equal *water* ownership west of the hundredth meridian.

"The second source of confusion is an historical accident. Policy was debated and formulated in the nineteenth century when settlement was still east of the hundredth meridian, and water was not a concern. The great legislative landmarks in the nation's policy favoring actual settlers are land laws—the Pre-emption Act of 1841 and the Homestead Act of 1862. After these acts were passed, settlement crossed the hundredth meridian, and water became the primary concern. General policy was not altered with the movement to the arid belt, but the techniques and devices for implementing it had to change. The artificial union of land and water required more complex thought and language than was necessary where land and water are joined naturally. The means of applying public

policy to water had to be declared separately, spelled out in new terms. Chief among the new techniques was the excess land law.

"It took something of a mental wrench to turn American lawmakers and administrators from land policy to water policy. The natural tendency was to carry over the language of earlier land problems to the more complex problems of water. A result of this inertia has been confusion in thought as well as in language west of the hundredth meridian, where thinking in terms of land policy overemphasizes land and underemphasizes water. Some persons have found it advantageous to exploit the confusion. Those who achieved what Major Powell called 'monopoly of land' utilize this habit of thinking in terms of *land* policy to confuse the public, to [683] suggest that private landowners have a moral claim to water in proportion to their landholdings whatever their size, and to defeat the efforts of legislators who seek equitable distribution of water among individuals. Even administrators do not find it easy to remember that the essential question is not, who owns the land, but who gets the water.

"The fact of importance above all others in federal reclamation is that the landowner calls upon the government to provide him with water. It is for Congress representing the general interest, and not for the landowner, to say upon what terms, in what amount, and in accord with what policy the public will supply water. This is a first principle inherent in a relationship between the public that gives and an individual who receives. The concern of the law is to distribute water equitably among individual landowners, not—except below 160 acres—in proportion to

their holdings of land. This principle is accepted without question by most landholders seeking water under reclamation law; the few who object usually are holders of excess land.

I am in full accord with the views expressed by Professor Taylor and commend the reading of his article in full by those who are interested in this subject.

Since the majority opinion is based upon the wholly unsound and unsupported assumption that the title to the water rights acquired by the United States in the construction, development and operation of the Central Valley Project are held in trust for the use and benefit of the water users of California and that the title to such rights is therefore restricted to the extent that the United States may not dispose of such water pursuant to the Reclamation Act of 1902 and acts amendatory thereto containing the so-called 160-acre limitation, it follows that the conclusion reached by the majority that the contract here involved deprives certain landowners within the plaintiff irrigation district of vested rights without due process of law and without just compensation is equally unsound and unsupported.

For the reasons hereinabove stated I would reverse the judgment. [684]

Appendix A-2

In The Superior Court of the State of California,
In and for the County of Tulare

No. 39627

The Ivanhoe Irrigation District, an Irrigation District,

Plaintiff,

vs.

All Parties and Persons having or Claiming to Have Any Interest in the Approval and Confirmation of the Proceedings for the Organization of the Ivanhoe Irrigation District, et al.,

Defendants.

MEMORANDUM OF DECISION AND ORDER FOR FINDINGS*

In this action the court is asked to determine the validity of a contract for the delivery of water by the United States from the Central Valley Project to the Ivanhoe Irrigation District. The contract is dated the 23rd day of September, 1949, and a copy of it is attached to this memorandum.

The Ivanhoe District has instituted the action in accordance with the provisions of Section 23225 of the Water

*Unreported. Clerk's Transcript pp. 204-225.

Code of California, which section authorizes such a proceeding. The complaint names a multitude of defendants all of whom are designated either by virtue of ownership of property in the district, or on account of an interest in the contract, or interest in the organization of the district. All of the defendants have defaulted except the State of California, the Water Project Authority, the State Engineer, and Courtney McCracken, a landowner in the district.

By Section 22671 of the Water Code the action is declared to be one in rem, (Frenchman-Cambridge Irr. Dist., 46 N.W. 2d 692, ... Nebr. .....) which is to say the decree will fix the status of all property within the district with respect to the contract, foreclosing all inquiry in this respect in any future proceeding and be binding on all the world. (Sec. 1908 C.C.P.; Becker v. Contoure Laboratories, 279 U.S. 388, 495 S. Ct. 356; Riley v. New York Trust Co., 315 U.S. 343, 62 S. Ct. 608)

Generally, there are four classes of persons sued. One group comprises "All parties and persons having or claiming any right, title or interest in or lien or claim upon or against . . . all *real property* within said district." (In all instances where emphasis is added it is by this court unless otherwise indicated)

Another group is composed of "All parties and persons having or claiming any right, title or interest in or lien or claim upon or against *the property* within said district, or any thereof."

The third group consists of "All parties and persons in any way interested in the certain contract dated September 23, 1949, entitled, 'Contract between the United States

and the Ivanhoe Irrigation District providing for water service and for the construction of a distribution system', made by and between the United States of America and the said Ivanhoe Irrigation District, the execution of which was authorized at an election held in said district on August 23, 1947, and the proceedings leading up to and including the execution and delivery of said contract."

The fourth group is made up of "All parties and persons having or claiming to have any interest in the approval and confirmation of the proceedings for the organization of the Ivanhoe Irrigation District."

The identity and the number of persons over whom the court has been given jurisdiction and whose property will be bound by the in rem judgment is indicated by the sections of the Civil Code defining what is meant by property and real property.

Property is defined to be anything of which there may be ownership. (Sec. 654 Civil Code) It may be either real or personal. (Civil Code Sec. 657)

"Real or immovable property consists of:

1. Land;
2. That which is affixed to land;
3. That which is incidental or appurtenant to land;
4. That which is immovable by law . . ." (Sec. 658 Civil Code.)

Furthermore, "*All property has an owner,* whether that owner is the state, and the property public, or the owner an individual, and the property private." The state may also hold property "as a private proprietor." (Sec. 669

Civil Code; See also 21 Cal. Jur. 641 and 23 Cal. Jur. 541) The title to property is never suspended but always vests in someone.

An appurtenance is defined to be a thing which is incidental or appurtenant to land when it is by right used with the land for its benefit, (Sec. 662 Civil Code) and the right to the use of water upon land for its benefit is an appurtenance and is a part of the land upon which it is so used. Appurtenance to land is a form of real property.

By virtue of his ownership of real property within the district the defendant, McCracken, has answered the charge of the complaint asking that his property rights as against the contract be declared. The State of California, the Water Project Authority and the State Engineer have answered as parties interested in the contract, and point to the Water Code and the Constitution of California as the source of their interest.

The Secretary of the Interior is charged with the administration of the Reclamation Laws of the United States, and it would appear under the holding of the Supreme Court in Ickes v. Fox, 300 U.S. 82, 81 L ed 525, that he too is a person interested in the contract before the court, and, as such, will be bound by the decree to be entered herein. The case of Ickes v. Fox was an action brought to enjoin the Secretary of Interior from enforcing an order, the wrongful effect of which would have been to deprive respondents of vested property rights. The court there held that on account of the injury threatened to the vested rights of the respondents, who were the owners of lands in an irrigation district, the Secretary of the Interior could not claim immunity from the injunc-

tive process but was as liable for his unlawful acts as any other person. That case rested in the main upon an abuse of governmental power, which is one of the affirmative defenses of Courtney McCracken in this case. The Secretary, so it would appear, is a party to this action, and his default has been regularly entered along with that of all other persons identified with the administration of the Reclamation Laws.

The State of California is appearing in its sovereign capacity, and as parens patriae for the protection of its citizens and the protection of the property of the landowners and water users in the district. The only claim made by the State to the Project water is on behalf of its agencies, the Central Valley Project and the Ivanhoe Irrigation District in their trust capacities.

The Central Valley Project Act of 1933 (Stats. 1933, Ch. 1042) was passed by the 1933 session of the California Legislature, and approved by the People of California at a referendum election held December 19, 1933. By this Act the Water Project Authority, a Board comprised of five members, was created to construct the impounding and distributing works and to operate and administer the project. This power is still vested in the Authority under the law of this State, (Sections 11550-11567 Water Code) and gives it a definite interest in the contract.

The State Engineer is Chief of the Division of Water Resources of the Department of Public Works of California, (Secs. 200, 201, Water Code) and Executive Officer of the Water Project Authority. (Sec. 11411 Water Code) Section 275 of the Water Code requires him to "take all appropriate proceedings or actions before executive, legis-

lative, or judicial agencies to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water in this State." And by the terms of Section 1052 of the Water Code, "The diversion or use of water . . . . other than as authorized" by that code is made a trespass and as such may be enjoined. In obedience to the legislative mandate imposed upon him the State Engineer has appeared to protect the water resources of the State, and it would seem to enjoin an unauthorized use thereof.

In the case of United States v. Gerlach Livestock Co., 339 U. S. 725, 70 S. Ct. 955, 94 L ed 1231, the entire Central Valley Project was before the court for consideration. The case arose out of a dispute between the Federal Government and the livestock company over certain vested water rights along the lower San Joaquin River. The government took the position that it need not pay for these rights which had been destroyed by impounding the flow of the San Joaquin behind the Friant Dam on the theory that the impounding was in aid of navigation. The landowner went to the Court of Claims and was awarded compensation for the loss of its rights and the government appealed. The opinion affirming the Court of Claims was handed down on June 5th, 1950, a date subsequent to the contract offered here for validation. Thus we have the latest expression of the Supreme Court of the United States with respect to the relation of the United States, and particularly the Bureau of Reclamation, to the Central Valley Project and with respect to the rights of the landowners within the Project.

The court in that case held that "the laws of the State . . . determine the rights and liabilities of landowners

and appropriator" as the Federal Reclamation Act provides. The Reclamation Act to which the court adverted is the Reclamation Act of 1902, 32 Stat. 388, Ch. 1093, as amended, 43 U.S.C.A. Sec. 371 et seq; F.C.A. title 43, Sec. 371 et seq. Section 8 of this Act provides: "That nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the *laws* of any state or territory relating to the control, appropriation, use, or distribution of water used in irrigation, or *any vested right* acquired *thereunder* and the Secretary of Interior, in carrying out the provisions of this Act *shall proceed in conformity* with *such laws,* and nothing herein shall in any way affect any right of any state or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: Provided, that the right to the use of water acquired under the provisions of this Act shall be appurtenant to the land irrigated and beneficial use shall be the basis, the measure, and the limit of the right."

In referring to the several Acts of Congress authorizing the construction of the irrigation works of the Central Valley Project by the Reclamation Bureau the court further said in the Gerlach case that, "Congress proceeded on the basis of full recognition of water rights having valid existence under state law. By its command that the provisions of the reclamation law should govern the construction, operation and maintenance of the several construction projects, Congress directed the Secretary of Interior to proceed in conformity with state laws, giving full recognition to every right vested under these laws. Cf. Nebraska v. Wyoming, 295 U. S. 40, 43, 79 L ed 1289, 1291, 55 S Ct. 568; California Oregon Power Co. v. Beaver

Portland Cement Co., 295 U. S. 142, 169, 79 L ed 1356, 1364, 55 S Ct. 725; Nebraska v. Wyoming, 325 U. S. 589, 614, 89 L ed 1815, 1829, 1830, 65 S Ct 1332; Silas Mason Co. v. Tax Com. 302 U. S. 186, 82 L ed 187, 58 S Ct. 233 ... We think it clear that throughout the conception, enactment and subsequent administration of the plan *Congress has recognized the property status of water rights vested under California law.*" There is no escape from the conclusion that in so far as the Central Valley Project is concerned whenever there is a conflict between the Federal Reclamation laws and the laws of the State, the law of California must prevail.

The governing water law of California is "now derived from a 1928 amendment to its Constitution . . ." (Art. 14 Sec. 3) ". . . . to which," as the Supreme Court has said in the Gerlach case, "the Federal Reclamation Act defers."

Although the Secretary of Interior is charged with the administration of the Federal Reclamation laws, as the same apply to the Central Valley Project, nevertheless he has a mandate, as the Supreme Court has said, to yield to the laws of California in "the control, appropriation, use," and, "distribution" of "Project Water" (U. S. Reclamation Act, 1902, Sec. 8) The California Water Code places the administration of these matters in the hands of the State Engineer, and it is a province which the Secretary of Interior is, by Congressional mandate, forbidden to invade.

By the Water Code the Engineer is empowered to incorporate reasonable restrictions and conditions in all permits and licenses issued by the Department of Natural

Resources for the use of the unappropriated waters of the State, but in doing so he must recognize the right of the Federal Government to have repaid to it the public moneys spent in the construction of the Diversion, storage and distribution works. Restrictions or conditions designed by him to defeat this end would be void.

The vested right, which the defendant McCracken contends will be destroyed if the contract is validated, is an appropriative right. It is based on filings made by the Director of Finance of the State of California on the waters of the Sacramento and San Joaquin Rivers for the benefit of the Central Valley Project, and it vested as of the date of these filings. The character of this right can be best understood by a brief review of the history of the Project.

In 1927 the Director of Finance of California filed thirty-seven applications with the State Division of Water Rights for permits to appropriate all of the unappropriated waters in the watershed of the entire Central Valley Project. These filings were for the dual purpose of irrigation and generation of power. The acreage of land proposed to be served for irrigation under the filings totals 6,750,000 acres, with an over all storage of 18,196,000 acre feet of water. Of the acreage to be so served, 2,500,000 acres lie in the Sacramento and San Joaquin Valleys—the Ivanhoe Irrigation District being located in the valley of the San Joaquin. The filings were made on the Sacramento River at the site of the Shasta Dam and on the San Joaquin River at the Friant Dam site. The filings are numbered 5625, 5626, 5637, and 5638 on the records of the Division of Water Resources of the State of California.

Subsequently, and in August of the following year additional filings, Nos. 9364 and 9365 on the Sacramento, and 9369 on the San Joaquin, were made. The filings on these two rivers approximately fifteen per cent of the total of the 18,136,000 acre feet filed on. On the 3rd day of September, 1938, the Director of Finance of the State assigned the filings on the Sacramento to the United States in trust "for the use and benefit of the Central Valley Project", and on September 30, 1939, he made a like assignment in trust of the filings on the San Joaquin.

The San Joaquin River has its source in the southern Sierra Nevada mountains east of Fresno, and, after it reaches the valley, flows generally in a northwesterly direction to a confluence with the Sacramento in the delta region at the upper end of Suisun Bay, which is part of the ocean. The Sacramento, on the other hand, heads in the Siskiyous at the extreme northern end of the State. The Pitt heads in the most northern of the Sierras and combines its flow with that of the Sacramento at a point above the Shasta Dam. From there the Sacramento wends southeasterly to join the San Joaquin. Of the acreage in the two valleys about three-fifths lies in the San Joaquin. On the other hand about two-thirds of the water production of the area comes from the Sacramento River. By the construction of the authorized system of works the excess and unneeded water of the Sacramento would be transported into the valley of the San Joaquin and distributed there to supply its deficiency.

To effect the projected distribution, Friant Dam was constructed to impound and divert the flow of the San Joaquin through the Madera Canal northerly and the

Friant-Kern Canal southerly along the easterly side of the valley, while the releases from the Shasta Dam were to be brought through the Cross-Delta Canal to the Tracy pumping plant and hoisted into the Mendota Canal to replace the waters of the San Joaquin impounded behind Friant Dam, and for use on the west side of the San Joaquin Valley. In this manner the excess water of the Sacramento would be put to a beneficial use instead of flowing into the ocean. The immediate supply of the Project water now being delivered to the Ivanhoe District comes directly from the Friant-Kern Canal.

Upon the Central Valley Project Act becoming effective in January, 1934, the Water Project Authority immediately set about to construct the Project. Additional studies were made and detailed plans prepared. In addition to State appropriations, funds were obtained from the Federal Government under its assistance programs and work commenced on both the Shasta and Friant Dams.

The first assistance contract by the Water Project Authority with the Federal Government was made on March 25th, 1936, under the Emergency Relief Appropriation Act of 1935. This contract recites that: "In order for the accomplishment of the early construction and operation of the Project in the most expeditious and economical manner, the Bureau of Reclamation and the Water Project Authority shall cooperate fully with each other in attaining such end", and that "It is contemplated that at the earliest practicable date a contract will be entered into between the United States and the Water Project Authority providing for . . . .

(a) The operation and maintenance *by the Authority* of useful units of the Project, upon presenting assurances of payment satisfactory to the United States of the cost thereof;

(b) Appropriate payment *by the Authority* to the United States for expenditures in construction of the Project;

(c) The securing *by the Authority* of the appropriate contracts for disposal of facilities to be made available by the Project."

Contracts of similar import were made with the Federal Government on the 13th day of March, 1937; the 8th day of November 1937; and the 30th day of June 1939.

In 1940 Congress passed an act providing, "That the entire Central Valley Project, California, heretofore authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115) and the First Deficiency Appropriation Act, fiscal year 1936 (49 Stat. 1622), is hereby reauthorized . . ." thus giving Congressional sanction to the Federal assistance already given the Water Project Authority. This act also authorized the Project as a Federal undertaking. Up to this point there had been six years of development by the Water Project Authority and thirteen years of development since the filings were made on the Sacramento and the San Joaquin for the benefit of the Project. The Project being of no mean magnitude, the time consumed in development and construction is not at all disproportionate to the undertaking.

It has been recognized as the rule in California from the days of the early miners (See United States v. Gerlach,

As in the Ivanhoe contract the United States undertook to deliver water for irrigation purposes from the Central Valley Project to the district and to expend funds for the construction of a distribution system within the district. This proceeding, also an *in rem* special proceeding to obtain the confirmation of the proposed contract, was brought by the district pursuant to the provisions of sections 22670 et seq. and section 23223 of the Water Code. The federal law (Omnibus Adjustment Act of 1926, § 46, 44 Stats. 649, 650, 43 U.S.C. § 423e, Federal Reclamation Laws Ann. 318-319) and article 36 of the contract require the validity or invalidity thereof to be determined by a court of competent [687] jurisdiction. The contract in question was entered into on May 14, 1951, by the district acting under the Irrigation District Federal Cooperation Law. (Wat. Code, §§23175 et seq.) On the 26th of March, 1951, the California Districts Securities Commission, with reservations, approved the contract (Wat. Code, §§23222, 24253), and the electors of the district subsequently approved it by a vote of 1979 to 755 (Wat. Code, §§23220, 23221, 21925-21935). The district commenced this proceeding on the 21st day of May, 1951. Eighty-six landowners within the district, and four landowners outside of the district filed answers in which they opposed the confirmation of the contract. The State of California and the Water Project Authority of the State of California, by and through the attorney general, filed a joint answer. The state prayed that the contract be validated and a separate prayer recited that the Water Project Authority "is not taking any position upon the validity of the contract" and requested the court to declare that its decree "does not purport to

etc., supra) that an appropriate water right vests as of the date of filing regardless of whether the filing was signified by the commencement of construction of diversion works, the posting of a notice, or making application to the Division of Water Resources for the right to divert and use the water. This rule was applied in the leading California case of Inyo Consolidated Water Co. v. Jess, 161 Cal. 516, where one George Chaffey, in 1905, posted and recorded five notices of appropriation of the waters of Cottonwood Creek in Inyo County. An appropriation of water at that time was intiated by posting and recording a notice pursuant to the provisions of section 1416 of the Civil Code as it then stood. Chaffey transferred all rights that he had acquired by posting the notices to the Inyo Consolidated Water Company. The company then filed suit under Section 738 of the Code of Civil Procedure to extinguish all claims in conflict with the water rights, which it had acquired from Chaffey.

The defendants contended that any right growing out of the posting was not a vested right, *was not* property, and could not be protected in an action to determine conflicting property claims under the quiet title statute. The court held adversely to this contention stating, "Thus (by posting and recording the notice) there is given that which did not exist before (*Kelley v. Natoma Water Co.*, 6 Cal. 105), a constructive right to the use of water, a right existing only by publicly declared intent, and which may be made a perfect and complete title, as against all except prior users and riparian owners, by beginning the work within sixty days, diligently prosecuting to completion, and there upon

be an adjudication of the right or interest of the State of California or its agencies . . . or of the right or interest of the United States or its agencies . . . in or to the water or water rights . . . involved in the Central Valley Project."

After the statutory time for filing an answer had expired, leave of the court was granted the State Engineer of the State of California, acting in his capacity as such and ex-officio as Chief of the Division of Water Resources, Department of Public Works, to file a separate answer by counsel for the Division of Water Resources. The State Engineer took no position as to the validity of the contract, stating that his object was to protect the state law relating to water use and control. Regional counsel for the Bureau of Reclamation of the Department of the Interior were granted leave by the court to appear as amici curiae and as such participated throughout the proceedings in the trial court in support of the confirmation of the contract.

Judgment was ordered in favor of the objecting defendants and the court specifically directed that findings of fact and conclusions of law be prepared in accordance with the views of the same court in the Ivanhoe case. However, additional findings and conclusions hereinafter referred to were made on issues not involved in the Ivanhoe case. The judgment included injunctive provisions similar to those in the Ivanhoe case except that it expressly provided that "The delivery of water by the United States to the plaintiff District at charges not to exceed $3.50 per acre foot for Class 1 water and $1.50 [688] per acre foot for Class 2 water, and the collection of funds therefor, and the payment, for the costs thereof by plaintiff district to the United States is not enjoined."

actually using the water. This incomplete right, *is an interest in the reality.*" So it was held that the incipient right acquired by the filing became vested in the appropriator, was transferable, and would support an action to quiet title.

Prior to the provision of the code requiring that a notice be posted and recorded, appropriation was made by actually diverting the water from the stream. The appropriative right vested and became appurtenant to the land to be supplied when the work of diversion was commenced. With respect to this right the court in the Inyo case said: "There is no case, arising prior to the enactment of the code, which holds that the party who thus in good faith *began* and diligently prosecuted the *work* on a dam and ditch for the diversion and use of water, could not protect his incipient right to the water, against the hostile diversions and claims of others, by an appropriate suit for that purpose. It is obvious that this could not be so. Such visible act and avowed intent gave him a conditional right to the future use of the water, prior to its actual use, the condition being that he should thereafter diligently continue the work to completion and then divert the water and apply it to a useful purpose, *failing* which *his right* would cease. Upon the performance of these conditions, his *title* to such use would become *complete* and *perfect*. In the meantime, however, he had an existing conditional right, manifested by actual visible possession of the works. It would be clearly a property right, and it being incidental and appurtenant to land, it was *real property*."

The provisions of the Civil Code requiring the posting and recording of a notice to initiate an appropriative

The appellants are the State of California represented by the attorney general who seeks a reversal of the judgment, the plaintiff district which seeks a reversal, and the State Engineer as Chief of the Division of Water Resources of the Department of Public Works who asserts the invalidity of the contract but contends that the trial court erred in a determination that a right to the use of water is acquired by duly filing an application to appropriate water without perfecting it. The respondents, who seek an affirmance of the judgment, are supported by the Di Giorgio Fruit Corporation as amicus curiae. The Ventura County Flood Control District has appeared as amicus curiae in support of the appellants and seeks to establish that the trial court's determination that water rights involved have become appurtenant to the lands upon which water is being or is to be used is not in accordance with existing law.

The Madera Irrigation District is located in Madera County. It now has an area of approximately 112,000 acres, of which about 85,000 acres have been developed for irrigation. Before project water became available 90 per cent of the acreage irrigated was supplied with water pumped from an underground water supply. During the 25-year period from 1922 through 1946 the demand on that supply exceeded the natural supply by an average of 27,200 acre feet annually and resulted in a net lowering of the water table by 21.7 feet. The need of a supplemental supply of water was thus apparent. Shortly after its organization the district in 1920 developed preliminary plans for the construction of a storage dam on the San Joaquin River near Friant and a canal to deliver water stored

water right have been superseded by the provisions of the Water Code of California requiring an application to appropriate to be made to the Division of Water Resources. In *Yuba River Power Company v. Nevada Irrigation District,* 207 Cal. 521, the Supreme Court of California has held that the filing of such an application creates the same kind of a water right as was obtained by the commencement of diversion prior to the code enactment and such as vested by posting and recording a notice under the code section relied on in the Inyo case. As the court there stated, "It would be clearly a property right, and it being incidental and appurtenant to land, *it was real property.*"

Where the right has been initiated by one individual for use upon lands owned by another in a district or community, no different rule obtains. Such a situation existed in the case of *Byington v. Sacramento Valley West Side Canal Company,* 170 Cal. 124. The court there held upon the authority of *Inyo Consolidated Water Company v. Jess,* 161 Cal. 520, "that one" in such a situation "may protect his incipient right to water against hostile invasions and claims of others. And it is there said, "the same doctrine is announced in the later case of *Merritt v. City of Los Angeles,* 162 Cal. 50."

The development history of the Project shows that McCracken is vested with more than the incipient right dealt with in the Inyo case. The construction of the diversion works has been completed and the Project water is now being delivered to the Ivanhoe District for distribution to his lands, and the contract here offered for validation is the only barrier which prevents his lands from receiving their proportionate share of the Project water.

therein to lands within the district. It acquired a suitable dam site and gravel needed in the construction. It filed applications with the Division of Water Resources to appropriate unappropriated water of the San Joaquin River. Plans for construction of the dam were never completed by the district apparently because litigation between Miller and Lux and the Madera Irrigation District established that there was insufficient unappropriated water in the San Joaquin River to sustain the proposed project.

In May, 1939, the district entered into a contract with the United States whereby it transferred its dam site, gravel lands and applications to the United States for use in connection with the Central Valley Project. In exchange the [689] district received $300,000 and a permanent priority right to contract for an annual supply of water from the project. Part A of the contract now under consideration is in partial recognition of that right.

The contract in Part A provides for a designated water supply for the district from the Friant Dam and the Madera Canal for a period of 40 years, commencing with the year in which the initial delivery date occurs. The United States agrees to furnish to the district, and the district agrees to accept and pay for the water supplied at rates whose maximum limits are fixed by the contract. Part B of the contract provides that, to the extent that funds may be available by appropriation, the United States will construct a distribution system to cost not exceeding $8,320,000. The system will be constructed so as to provide facilities for the delivery of water from the Madera Canal to each unit of irrigable land within the district, each unit in no event to comprise more than 160 acres of land. The

Under the law of California the Ivanhoe Irrigation District is McCracken's trustee limited in its trust to receive and distribute the Project water to him. See *Merchants Bank v. Escondido Irrigation District,* 144 Cal. 329; *Tulare Irrigation District v. Collins,* 154 Cal. 440, 442; *Hall v. Superior Court,* 198 Cal. 373, 383; *Lindsay-Strathmore Irrigation District v. Wutchumna Water Company,* 111 C. A. 688, 698; *Allen v. Hussey,* 101 C. A. 2d 457, 467. In *Merchants Bank v. Escondido Irrigation District,* supra, it is said that, "The state, indeed, has a large, though not an unlimited power of disposition over the property of ordinary municipalities; which is commonly held in trust for the public generally, or for the limited public of the municipality. (*Cooley on Constitutional Limitations,* 342 et seq.; *I Dillon on Municipal Corporations,* secs. 27, 66, 67.) But here, the corporation in question is distinguished from ordinary municipal corporations by the fact that 'the *legal title*', only of the property of the corporation is vested in the district, 'in trust for the uses and purposes set forth in (the) act'; *and that the beneficiaries of the trust*—who, upon *familiar equitable principles, are to be regarded as the owners of the property—are the landowners in the district with whose funds the property has been acquired* (Civ. Code sec. 853); and in whom, indeed, is vested by the express provisions of the statute, in each, the right to the several use of a definite proportion of the water of the district, and in all, in common, the equitable ownership of its water rights, reservoirs, ditches, and property generally, as the means of supplying water. (Stats. 1887, pp. 34, 35, secs. 11, 13). Such rights as these cannot be distinguished in any way from other private rights, and therefore clearly come within the protection of the provisions of

Section 13 of Article I of the state constitution—that 'no person shall be . . . deprived of . . . property without due process of law', and of the similar provision of Section 1 of the Fourteenth Amendment to the constitution of the United States.''

Any provision of the contract in violation of the trust is void. See *Allen v. Hussey,* 101 C. A. 2d 457, 472, where it is held that, ''An irrigation district . . . has only such powers as are given to it by the Legislature'', ''and all contracts or purported contracts of the district which are beyond the scope of the power given by statute are void'', citing *Bottoms v. Madera Irrigation District,* 74 Cal. App. 681, where at page 702 of the opinion the court states that ''The wisdom of the agreement has nothing whatever to do with its ultra vires character. If the agreement procured is not one authorized by the Irrigation Act, it is illegal, even though there is no taint or color of moral wrong.'' And in *Colburn v. Wilson,* 23 Idaho, 337, 130 Pac. 381, it is said that, ''A contract by the Board of Directors of such a district, giving to others the management or control of any part of the system, and taking that management and control out of the hands of the district Board, would be ultra vires and void.'' The Water Code, Section 22250, expressly requires the Ivanhoe District to distribute to McCracken of the Project water received by it that proportion which the last assessment of the district against his land bears to the whole sum assessed in the district for district purposes. The title to this quantity of water is vested in McCracken under the law of the State, and so long as his assessments are paid and the water is being put to a beneficial use, the district may not interfere with his right.

No valid reason is advanced and no authority is cited to support the theory that the Central Valley Project does not bear the same trust relation to its landowners as an irrigation district. The filings made by the Director of Finance on the waters of the Sacramento and San Joaquin Rivers were in furtherance of the Central Valley Project, and with the avowed object of divorcing the State from its sovereign title in those waters. The severance having been effected, the title vested in the owners of the lands to be benefited. *(Inyo Consolidated Water Co. v. Jess,* Supra). The Director of Finance became seized with the naked title only, the beneficial ownership of the right to use the water so filed upon passing to the owners of the land upon which it was intended to be used. This beneficial ownership could fail only if the project were abandoned.

The grants by the Director of Finance to the United States of the rights acquired under the applications could convey no more by way of right or title than was held by him. The title acquired by the United States could reach no higher than its source. The language of the instruments of conveyance indicates that the existence of a trust in the Director of Finance was recognized and that the transfer was intended to be subject to this trust. The words of limitation in each conveyance are "for the use and benefit of the Central Valley Project, California."

The Federal Government by acceptance of the stewardship passed on to it by the Director of Finance of California, recognized the right of McCracken, and the other landowners in the Project, to have the waters of the two rivers applied to their lands in accordance with laws of this State as such laws stood at the time these rights accrued. The

and particularly whether the district and its landowners have additional rights arising from the district's applications for the appropriation of water on the San Joaquin River at the time it contemplated construction of a dam at Friant. The applications, filed in the 1920's, were never perfected; no works pursuant thereto were ever built, no water was ever diverted, and no permit or license was ever obtained.

As a part of its judgment the trial court in several instances held that an application for the appropriation of unappropriated water from a particular source resulted in a vested right in the applicants to a permanent supply of water from that source. In the Ivanhoe case it was con- [691] cluded that the rights acquired under an application by the state or its assignee or by the United States to appropriate the domestic waters of the state for a beneficial use did not confer a vested right in the persons for whose benefit the application was made in the sense that such right became a part and parcel of the freehold estate. It is contended by the State Engineer in the present case that the right created by the application itself is an incomplete, incipient and conditional right in and to the water applied for. With this contention we agree.

Prior to legislation upon the subject, no priority of right to the use of water could be acquired in advance of the taking of the first definite step to divert water to beneficial use. When work was finally completed and the water applied to beneficial use, a right vested in and to the use of the water which "related back" for priority to the time when the claim was made, the location was selected, and work was commenced looking toward the conveyance of a

Government cannot now urge upon this court through the medium of a contract that the rights so vested should be destroyed by judicial decree. Such would be the effect of breathing validity into the excess lands provisions of the contract. And this, the court cannot do under the laws and the constitutions of the State and United States. These provisions of the contract must, therefore, be found invalid.

Another statement of the Supreme Court made with respect to the Central Valley Project in *United States v. Gerlach, etc.,* supra may with propriety be repeated here. The statement is that: "By directing the Secretary to proceed under the Reclamation Act of 1902, *Congress elected* not 'to in any way interfere with the laws of any State . . . relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder'." As the water rights involved in this case had vested, the court required that compensation be paid for their destruction. See Constitution of the United States, Fifth Amendment and Fourteenth Amendment, Section 1; also Constitution of California, Article I, Sections 1, 13 and 14. These are the due process provisions of the respective Constitutions and are so familiar to every one that they need no exposition. Suffice it to say that in the instant case no compensation for the threatened destruction of McCracken's vested rights has been offered, and it may be assumed that none is intended.

It is McCracken's right to receive his share of Project water upon all of his lands regardless of acreage as that share is denied by the Irrigation laws of this State, and it is the right of the Federal Government to be reimbursed

definite amount of water from a definite source to the place of its intended use. (*Nevada etc. Co.* v. *Kidd*, 37 Cal. 282; *Osgood* v. *El Dorado Water & Mining Co.*, 56 Cal. 571.) From the time of the commencement of the work to the time of beneficial use the right was considered as incipient and conditional. The provisions of the Civil Code enacted in 1872 were substantially declaratory of the rules laid down in the early decisions. (Civ. Code, §§1414-1421.) In *Inyo Consol. Water Co. v. Jess*, 161 Cal. 516, the court declared at page 520 [119 P. 934] that the purpose of the code sections was "to afford a more perfect protection for such rights and to facilitate the subsequent acquisition of the title to the use. Previously, the incomplete right could be acquired only by some open, visible work to that end, upon the ground, accompanied by a declaration of the intent. Disputes would naturally arise as to priority between different diversions from the same stream at places far apart. The code endeavors to avoid this by providing for the posting of a notice at the proposed dam, and declaring that such notice secures a prior right, without any work, for the period of 60 days thereafter. (*Wells* v. *Mantes*, 99 Cal. 586 [34 P. 324].) Thus there is given that which it is said did not exist before (*Kelly* v. *Natoma Water Co.*, 6 Cal. 105), a constructive right to the use of water, a right existing only by publicly declared intent, and which may be made a perfect and complete title, as against all except prior users and riparian owners, by beginning the work within sixty days, diligently prosecuting it to completion, and there- [692] upon actually using the water. This incomplete right, although not as yet a title, is an interest in the realty." (See also *Merritt* v. *City of Los Angeles*, 162 Cal. 47 [120 P. 1064].)

for the expenditures which it has made in constructing the irrigation works and for its actual cost of transporting the water. Under the Reclamation Law the repayment of the construction charges may be spread over a forty year period, and that is the terms of the contract before the court. Since the contract was executed by the government it is to be presumed that the payments therein provided for have been correctly computed and cover the charges to which the government is entitled. Nowhere, in either state or federal law, is there any provision for a series of repayment contracts, and it must be presumed that the contract here executed by the United States is the repayment contract to which it is entitled under the Reclamation Act. The Government is never the owner of water for sale under any reclamation project, (*Ickes v. Fox* and *Nebraska v. Wyoming*, supra) and much less here, where it is by express agreement, made the trustee for the owner of the vested water right.

The case poses no questions as the right of the government and the district to make a contract for the delivery of water for irrigation purposes which is not beyond the scope of their powers, and, to the extent that such a contract is not beyond the power of either to make, it is valid. As to the present contract the excess lands provisions are beyond the contractual powers of the district; so are the provisions with respect to the delegation of the governing power of the district; likewise with respect to changing boundaries; and title to escaped waters; and renewal provisions after forty years. The provisions with respect to the delivery of Project water, and the repayment of construction and operating costs are valid and should be so found:

The Water Commission Act of 1913 and the existing provisions of the Water Code changed the mechanics of the procedure for initiating and completing an appropriation of water, but they do not change the attributes of the water rights acquired thereunder. The filing of an application under the present law is comparable and of like effect to the posting and recording of notice or commencement of actual construction work under the rules which had previously prevailed. In *Yuba River Power Co.* v. *Nevada Irr. Dist.*, 207 Cal. 521 [279 P. 128], the court had before it the character of the water rights acquired under the Water Commission Act. In speaking of *Inyo Consol. Water Co.* v. *Jess*, and *Merritt* v. *City of Los Angeles*, it is stated in the Yuba River Power Company case that, "We cannot distinguish these cases from the situation before us. The right being protected and administered is the same. A period of priority was provided, and the protection given there was during such statutory period and prior to any actual construction of diversion works." Under the facts appearing in the Yuba River Power Company case the plaintiff was entitled to the issuance of a permit, although his rights were as yet imperfected. It was held that he had a right protected from impairment by other claimants, although his right was as yet incomplete and conditional. There is nothing in the Yuba City Power Company case to indicate that it stands for the proposition that the Water Commission Act conferred upon an applicant thereunder a greater right than had previously been conferred upon one who filed notice under the former rules. The Water Code provides that the effect of filing an application confers, for all practical purposes, a priority only. Section 1450 states:

Under the provisions of the California Water Code no right to the use of water may be acquired except upon compliance with the permit and licensing requirements set forth in Division 2 of the Code. By Section 1052 of the same code the use of water not authorized by permit or license from the Department of Public Works is made a trespass which may be enjoined. The Bureau of Reclamation is now delivering Project water to the Ivanhoe District, and the District is distributing it without permit or license from the State.

Another established ground for injunction is the withholding from the lands of McCracken the share of the Project water to which they are entitled under the State law. In *Heilbron v. Canal Co.*, 75 Cal. 426 it is held that an interference with a vested water right may be enjoined. (See *Turner v. James Canal Co.*, 155 Cal. 82; and *Miller & Lux v. J. G. James Co.*, 179 Cal. 689.) The taking away or withholding of realty without right may be enjoined irrespective of damage. (*Conde v. Sweeney*, 16 Cal. App. 157, 163.) "Any unlawful interference with the property of another or exercise of dominion over it by which the owner is damnified" will sustain an action in trespass (vol. 24 Cal. Juris. 658 and 665).

Validation proceedings are of an equitable character, and, "Equity, having once obtained jurisdiction of a cause, will dispose of the entire controversy. This rule is expressed in the two maxims that 'Equity will not deal with a case by piecemeal', and 'Equity delights to do justice and not by halves'." (Vol. 10 Cal. Juris. 496.) As is said in *Muchenberger v. City of Santa Monica*, 206 Cal. 635, 646, "A court sitting in equity and having taken jurisdiction,

"Any application properly made gives to the applicant a priority of right as of the date of the application until such application is approved or rejected. Such priority continues only so long as the provisions of law and the rules and regulations of the department are followed by the applicant."

The issuance of a permit following application still does not confer upon the permittee a fully perfected right. Section 1455 of the Water Code states: "The issuance of a permit continues in effect the priority of right as of the date of the application and gives the right to take and use the amount of water specified in the permit until the issuance or [693] the refusal of issuance of a license for the use of water." The final procedural step in perfecting a water right is the issuance of a license as prescribed in sections 1600 through 1677 of the Water Code. But the real basis, measure and limit of the appropriative right is the actual beneficial use of the water. This is inherent in the Constitutional Amendment of 1928 and in section 1240 of the Water Code, which provides: "The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such a purpose the right ceases."

It appears from the foregoing that neither the Madera Irrigation District nor any other applicant acquired a vested right to a permanent supply of water appurtenant to the lands of the district by the mere filing of applications for the appropriation of water on the San Joaquin River. Such right as was acquired was inchoate and incomplete and subject to defeasance upon the failure to perfect it in accordance with the law.

has broad powers. It may grant relief as varied and diversified as the means employed to produce the grievance complained of, and is not bound to the strict legal rights of the parties." A governmental agency acting, or proposing to act, in excess of its authority is no more exempt from this rule than is an individual acting in his private capacity. Where the facts make a case, a court may in the exercise of its equity jurisdiction issue an injunction to preserve the rights of the parties or to prevent an invasion of these rights by a violation of the law. The District, in its complaint, and McCracken, in his answer, pray for general relief and invoke the court to grant all of the relief consistent with its powers in equity and the facts of the case. As between the district and the landowner the court is empowered under the pleadings of these parties to render such judgment as may be necessary to effect justice between them in the light of the established facts.

It follows that the decree to be entered should provide:

(1) that the Ivanhoe Irrigation District and its board of directors, and all persons acting in concert with, or under them, should be enjoined from distributing the Project water except in accordance with the laws of the State of California and upon such conditions as those laws permit the Department of Public Works of California to impose on its use; that all of the lands of the defendant, McCracken, within the boundaries of the district, are to receive their proportionate share of the Project water delivered to the District;

(2) That the excess lands provisions of the contract are in violation of the vested rights of McCracken in the Project water and cannot be validated; that the water

rights of McCracken are appurtenant to all of his lands; that the District being a trustee for its landowners may not contract in derogation of their vested rights in the Project water;

(3) that the District has no power to contract with respect to a change of its boundaries;

(4) that the contract offered for validation is a contract executed only for the purpose of reimbursing the Federal Government for the expenditures made by it in constructing the irrigation works;

(5) that the District has no power to contract with the Federal Government upon any basis other than in its trust capacity for the landowners of the District;

(6) that the District has no power to contract with respect to escaped waters;

(7) that the ultra vires provisions of the contract form no part thereof but that the contract is otherwise valid.

Counsel for defendant, McCracken, may prepare, serve, and present for settlement appropriate findings of fact and conclusions of law in accordance with the views herein expressed. The other parties appearing may present proposed amendments thereto.

Dated this 31st day of July, 1952.

Benjamin C. Jones,
Judge of the Superior Court assigned

Filed July 31, 1952.

Appendix A-3

In the Superior Court of the State of California
In and for the County of Tulare

No. 39627

The Ivanhoe Irrigation District, an Irrigation District,

Plaintiff,

vs.

All Parties and Persons (etc.),

Defendants.

JUDGMENT*

In the above entitled matter, appearances having been made and issues having been joined, and the cause having been tried and the matter submitted to the Court, and the Court having arrived at its decision and directed that Findings of Fact and Conclusions of Law be drawn, and such Findings of Fact and Conclusions of Law having been prepared and served, and objections to said proposed Findings of Fact and Conclusions of Law having been served and filed, and the matter of settling the Findings having been set down for hearing, and the matter having been argued, and the Court having settled said Findings of Fact and Conclusions of Law, and the same having in writing been duly signed and filed herein,

*Clerk's Transcript pp. 316-318.

Now, therefore, and upon and in accordance with the facts found in said written Findings of Fact adopted by the Court and upon and in accordance with the Conclusions of Law settled and filed by the Court herein, it is hereby ordered, adjudged and decreed as follows:

1 That the contract between plaintiff District and the United States, attached to the complaint herein and designated as Exhibit A, dated September 23, 1949, is invalid, void and without force or effect.

2. That Plaintiff District, its directors, officers, agents, servants, employees, attorneys and those persons in active concert or participation with them, or any of them, who receive actual notice of this judgment by personal service or otherwise be and they are hereby permanently enjoined from performing or taking any action to perform in behalf of said District the said contract or any part thereof and further enjoined from causing or permitting any work of construction to be done in or upon said proposed distribution system, under said contract, in such manner as to incur any liability upon the part of said District or the landowners therein.

3. That the Plaintiff District, its directors, officers agents, servants, employees, attorneys and those persons in active concert or participation with them, or any of them, who receive actual notice of this judgment by personal service or otherwise be and they are hereby permanently enjoined from failing or refusing to supply defendant Courtney McCracken with water for irrigation purposes, with respect to all of his land within said District, upon the same terms and conditions tendered to all other landowners within the District, without discrimina-

tion by reason of the extent of his holdings of land, or on any other basis inconsistent with the findings of fact and conclusions of law signed and filed herein.

4. That the State Engineer is authorized and obligated to proceed diligently with the issuance of permits upon the applications now held by the United States for the benefit of the Central Valley Project, incorporating therein such terms and conditions as may be validly imposed within his discretion under the laws of the State of California. Pending the issuance of such permits, the Ivanhoe Irrigation District and the landowners therein, including the defendant McCracken, may continue as of right to receive and put to beneficial use the Project waters.

5. Defendants appearing herein are entitled to their costs.

Dated: February 27, 1953

Benjamin C. Jones (Signed)
Judge of the Superior Court, Assigned

Filed February 27, 1953.

to the voters in the district, the alleged defects need not recur.

In accordance with the views expressed herein and in *Ivanhoe Irr. Dist.* v. *All Persons, ante,* [1]p. —— [—— P. 2d ——], the judgment is modified by striking therefrom (a) that portion which holds that by the mere application for the appropriation of water for a public use within the district or by actual use by landowners in the district of water being furnished by the United States pending negotiations for a contract, the landowners of the district acquired a vested right appurtenant to their lands entitling them to perpetual service as a part of the freehold; (b) that portion which holds that an individual landowner, a member of the class entitled to the benefits of an irrigation district, acquires any permanent right to such benefits appurtenant to his lands when he ceases to be a member of that class; (c) those portions of the judgment which hold that the following provisions of the contract designed to secure repayment of construction costs to the United States are invalid: (1) that part withholding water from lands in default of proper charges although the district may not be in default as to the United States, (2) that part reserving to the United States the right to repossess waste, seepage and return flow which escapes or is discharged beyond the district boundaries, (3) that part limiting changes in boundaries, consolidations, mergers and dissolutions during the term of the contract and (4) that part subjecting all lands within the district to ad valorem taxes to defray charges imposed by the district.

[1] [3]Advance Report Citation: *Ante,* p. 603 [Herein p. 1].

(Vol. 47 A.C. 685, 306 P. 2d 886.)

Appendix B-1

[Sac. No. 6489. In Bank. Jan. 24, 1957.]

MADERA IRRIGATION DISTRICT, Plaintiff and Appellant, v. ALL PERSONS, etc., Respondents; THE PEOPLE et al., Defendants and Appellants.

APPEAL from a judgment of the Superior Court of Madera County. Benjamin C. Jones, Judge.* Modified and affirmed.

Proceeding by an irrigation district to obtain confirmation of a contract entered into by it with the United States, by which the United States undertook to deliver water from the Central Valley Project to the district and to expend funds [686] for the construction of a distribution system within the district. Judgment for objecting defendants, modified and affirmed.

SHENK, J.—This is an appeal by the plaintiff Madera Irrigation District and certain of the defendants from a judgment refusing to confirm a proposed contract between the United States, acting by and through the Bureau of Reclamation of the Department of the Interior, and the plaintiff district. The contract is substantially the same as that considered in the companion case of *Ivanhoe Irr. Dist.* v. *All Parties, ante,* [1]p. —— [—— P.2d ——], this day decided. Except as to certain matters hereinafter referred to the issues are also the same as in that case.

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*Assigned by Chairman of Judicial Council.

[1]Advance Report Citation: *Ante,* p. 603 [Herein p. 1].

As so modified the judgment is affirmed, the respondents to recover costs on appeal.

Schauer, J., Spence, J., and McComb, J., concurred.

GIBSON, C. J., Dissenting.—For the reasons stated in my dissenting opinion in *Ivanhoe Irr. Dist.* v. *All Parties, ante,* [2]p. —— [—— P. 2d ——], I would reverse the judgment.

Traynor, J., concurred.

CARTER, J., Dissenting.—This is a companion case to *Ivanhoe Irr. Dist.* v. *All Parties, ante,* [2]p. —— [—— P. 2d ——], and for the reasons stated in my dissenting opinion in that case, I would reverse the judgment. [697]

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[2]Advance Report Citation: *Ante,* p. 653 [Herein p. 64].

district agrees to convey to the United States without cost the unencumbered fee simple title to any land owned by the district, or perpetual easements therein, required for right of way purpose for the distribution system. Title to all the project works, including the distribution system, is to be and remain in the name of the United States until otherwise provided for by the Congress, notwithstanding the transfer of any such works to the district for operation and maintenance. The district must repay to the United States the actual cost of the distribution system. The obligation is to be paid in 40 successive, equal annual installments, the first of which shall become due in the year following a two-year development period after the year in which the system shall become available for use. At the commencement of the development period the district will take over and at its own expense operate and maintain the distribution system, subject to the right of the United States to take possession of the system upon the failure of the district to perform its contractual obligations.

The above provisions of the contract with reference to cost, work, land limitation and payment by the district are substantially the same as those in the Ivanhoe contract. There are, however, two additional provisions in the contract here involved which recognize and modify the terms of the 1939 contract, by which the district conveyed the Friant Dam site and other interests to the United States. Article 2 of the present contract modifies and adjusts the amount of water to which the district might have asserted a [690] priority right under the 1939 contract, and article 4 states that the present contract is in satisfaction of this right only for its 40-year term, after which it may

be extended, as distinguished from the Ivanhoe contract wherein the United States did not undertake to supply water beyond the 40-year term of the contract.

For reasons stated in the Ivanhoe case the contract in the present case is ineffective in that it purports to deprive the landowners of the plaintiff district of vested rights as members of the class who are the beneficiaries of the trust under which the United States acquired appropriative rights to the domestic waters of this state; in that it seeks to deprive so-called "large landowners" of rights to waters for their lands in excess of 160 acres although such landowners are qualified members of the class who are the beneficiaries under the declared trust, and who are denied thereby due process and equal protection of the laws; in that it, by implication or otherwise, purports to grant to the United States the right to distribute water for irrigation at a price without compliance with the laws of this state relating to the distribution of its domestic water; in that it, or to the extent that it, by implication or otherwise, reserves to the United States the right to determine at its own discretion whether to continue the distribution of water to the plaintiff district and landowners therein after the termination of the present contract, and in that it by implication or otherwise fails or refuses to recognize the debtor-creditor relationship of the parties for repayment of costs of construction of the storage and distribution system.

In addition to the foregoing there are other issues which are not included within the determinations in the Ivanhoe case. The first of these relates to the nature of rights which accrue by the filing of an application to appropriate water,

As noted, certain defendants appeared who were not landowners in the plaintiff district. These defendants were landowners within the district at the time the district contracted with the United States for the conveyance of the Friant Dam site and other interests. It appears that subsequently on their own petition the lands of these defendants, comprising some 19,500 acres, were excluded from the district; that these landowners intended to form an independent irrigation district and sought to obtain from the plaintiff district a proportionate share of the benefits under the 1939 contract, particularly a share of the priority right to contract for project water. Under the present contract the amount of priority water to which the Madera Irrigation District was entitled under the 1939 contract was reduced in proportion to the reduction of acreage in the district since the 1939 contract. But the excluded landowners assert that the United States has refused to confer upon them that reduced portion of the priority right under the 1939 contract, and that to refuse to do so constitutes a deprivation of property without due process of law. Their claim was asserted as an additional ground for the invalidity of the present contract, and the trial court so held.

Whatever may be the rights of the excluded landowners under the 1939 contract, it does not appear that they have individual rights which may be asserted under the contract sought to be validated or to any of the property or rights held by the district. Since 1879 the Constitution has [694] provided in section 1, article XIV, that the use of all waters "appropriated . . . for sale, rental or distribution is hereby declared to be a public use. . . ." No statement is there made as to the appurtenance of such waters to the

lands involved. Under that section of the Constitution the use of waters involved in the present case is a public use. The nature of the water right to which a landowner entitled to service from an entity which has appropriated waters devoted to a public use, has been the subject of prior litigation in this state. In *Leavitt* v. *Lassen Irr. Co.* (1909), 157 Cal. 82 [106 P. 404, 29 L.R.A.N.S. 313], a landowner sought to reserve to his private ownership a portion of waters he had appropriated for a public use. In holding that he could not establish an outright private ownership of waters appropriated for a public use, the court relied on the constitutional provision above set forth. It was stated at pages 89 and 90: "In *McCrary* v. *Beaudry*, 67 Cal. 120 [7 P. 264], is contained the first statement of this court in construction of the constitutional provision: 'Whenever water is appropriated for distribution and sale, the public has a right to use it, that is, each member of the community, by paying the rate fixed for supplying it, has a right to use a reasonable quantity of it, in a reasonable manner.' And in the late case of *Hildreth* v. *Montecito Creek Water Co.*, 139 Cal. 22 [72 P. 395], it was said by Mr. Justice Shaw, speaking for the court in Bank, in defining the public use declared by the constitution: 'In the case of a public use, the beneficiaries do not possess rights to the waters which are, in the ordinary sense, private property. A public use 'must be for the general public or some portion of it, and not a use by or for particular individuals, or for the benefit of certain estates.' (*McQuillen* v. *Hatton*, 42 Ohio St. 202.) . . : The right of an individual to a public use of water is in the nature of a public right possessed by reason of his *status* as a person of the

class for whose benefit the water is appropriated or dedicated. All who enter the class may demand the use of the water, regardless of whether they have previously enjoyed it or not.'"

In *Miller* v. *Railroad Com.*, 9 Cal. 2d 190 [70 P. 2d 164, 112 A.L.R. 221], in passing on the nature of the right held by one entitled to participate in the distribution of irrigation water devoted to a public use, the court stated at page 199: "This right is simply a right of service, a right to be furnished with water by the utility upon payment of the price, and not a water right in the ordinary sense of 'a private freehold interest in the freehold of the distributing company.' (*Glenn-* [695] *Colusa Irr. Dist. v. Paulson, supra,* 75 Cal. App. 57 [242 P. 494].)"

From the foregoing it is established that a landowner within an irrigation district does not possess as a part of his freehold estate a proportionate ownership in assets of the district. The concept of ownership existing in the relationship between a district and a landowner therein was further considered in *Jenison* v. *Redfield*, 149 Cal. 500 [87 P. 62], wherein a landowner sought damages from the district for refusing to deliver to him his pro rata share of the district's water supply, which he proposed to use on land owned by him outside the district. The court in denying relief used the following language: "It is apparent that to sustain the claim of plaintiff, it must be held that the effect of our statutes relative to irrigation districts, is to make each owner of land within a district the absolute owner of a proportionate share of the water of the district to which his land entitles him, to do with as he sees fit. . . . It seems very clear that such a conclusion would be op-

posed to the whole plan or scheme of the legislation for irrigation districts, converting a district . . . into a mere agency for the distribution of its water to individuals for use by them outside the district for any pu pose whatever. . . . Such a construction of the provisions of the Irrigation Act entirely ignores the object of its enactment." Although the above case dealt with lands which never had been within a district, and the present case with lands which were once within the plaintiff district and later excluded, there is nothing in the law which would justify the conclusion that the owners of properly excluded lands were possessed of rights which attached to their lands.

Nothing said herein is inconsistent with the cases which hold that the members of an irrigation district are the beneficial owners of the water rights of the district. (*Merchants Nat. Bank* v. *Escondido Irr. Dist.*, 144 Cal. 329 [77 P. 937], and cases there cited.) The trust under which water rights and other property of an irrigation district is held by the district is for the benefit of a particular class of individuals. Those indiyiduals are the equitable owners. Individual members within that class can demand services to which they are entitled if they qualify and as long as they qualify as members of that class.

Questions are raised as to the sufficiency of the notice of election whereby the electors of the district were called upon to approve or disapprove the proposed contract. The trial court concluded that the contract was invalid for lack of [696] proper notice. (Wat. Code, §23223.) These questions need not be determined on this appeal for the reason that upon the submission of any further proposed contract

Appendix B-2

In the Superior Court of the State of California
In and for the County of Madera

No. 8502

Madera Irrigation District,
Plaintiff,

vs.

All Persons having or claiming to have any interest in the contract entered into on the 14th day of May, 1951, etc.,
Defendants.

ORDER FOR FINDINGS*

The principles governing the decision in the case o Ivanhoe Irrigation District v. All Persons, etc., pendin in Tulare County are applicable with equal, if not greate force in this case.

Judgment should go for the appearing defendants an their counsel may prepare and present appropriate find ings of fact and conclusions of law in accordance with th views expressed in the Memoranduin of Decision in th Ivanhoe case, a copy of which said Memorandum is at tached hereto and made a part hereof.**

Dated: This 20th day of August 1952.

Benjamin C. Jones
Judge of the Superior Court, assigned

Filed August 19, 1952.

*Clerk's Transcript p. 395.
**Herein pp. 113 *et ff.*

Appendix B-3

Recorded Judgment Vol. 6 Page 194

In the Superior Court of the State of California
In and for the County of Madera

No. 8502

Madera Irrigation District,
Plaintiff,

vs.

All Persons having or claiming to have any interest in the Contract entered into on the 14th day of May, 1951, between Madera Irrigation District and the United States, providing for a water supply for the Madera Irrigation District from the Friant Dam, and the construction of a distribution system in said District to the United States,
Defendants.

JUDGMENT*

In the above entitled matter, appearances having been made and issues having been joined, and the cause having been duly tried and fully argued both orally and in writing, and the matter submitted to the Court, and the Court

*Clerk's Transcript pp. 556-581.

having directed that Findings of Fact and Conclusions of Law be drawn, and proposed Findings of Fact and Conclusions of Law having been prepared and served, and objections to said proposed Findings of Fact and Conclusions of Law having been set down for hearing, and the matter of settlement having been extensively argued, and the Court having settled said Findings of Fact and Conclusions of Law, and the same having heretofore in writing been duly made, signed and filed herein,

Now, Therefore, and upon, and in accordance with the law and the facts found in the case by the Court, and the conclusions reached by the Court, it is hereby Ordered, Adjudged and Decreed as follows:

I.

That the contract between the plaintiff District and the United States attached to the complaint herein and designated as "Exhibit A", dated the 14th day of May, 1951, and the election proceedings and the election held in connection therewith are illegal, void and without force or effect.

II.

That the non riparian and unappropriated water within the State of California is the property of the People of the State of California, but the right to the use of this water may be acquired by appropriation in the manner provided by the laws of the State of California. That the general welfare of this State requires the conservation of and putting to beneficial use the water resources of the State. That there is vested in the State the power to determine the use to which such unappropriated water may

be applied, and permits and licenses for the appropriation of such water may be conditioned in keeping with the use to which it is to be applied. Under the Constitution of the United States and in particular the Tenth Amendment thereto, no federal enactment, rule or regulation may override or abolish the provisions or requirements of the Constitution or the laws of the State of California in relation to the appropriation and use of waters within the State. In enacting the Federal Reclamation Act of 1902, Section 8 thereof, and in other legislation, the Congress of the United States has expressly recognized that the use of water in California is regulated by the laws of this State.

III.

The United States is not the owner of the water supplied and to be supplied from the Central Valley Project to the lands within the plaintiff District. The interest of the United States in such water is limited in all respects by the law of this State to its function as the storer and the carrier of the water to be delivered from Friant Dam as a part of the Central Valley Project of California. (The word "law" being herein used to include, unless otherwise indicated, the Constitution, statutes, rules and regulations, and court and administrative decisions of this State.) The United States, to the extent that such water may be available, is obligated to deliver it to the lands that now are, and were, within the Madera Irrigation District in 1939, including the lands now within said District and 19,500 acres since excluded from said District, which are more particularly referred to and described in the Findings of Fact. This said obligation, among other sources, stems

from the appropriative rights of said District and the landowners therein; from the appropriations made by the predecessors in interest of the Madera Irrigation District, and the Madera Irrigation District, for said lands; and from the appropriations made by and through the Director of Finance of the State of California for all of said lands. The United States is obligated to acquire from the State of California through the office of State Engineer, permits and licenses for the use of water for said purposes and the use which the United States may make of such water is limited by the conditions which the said State Engineer may lawfully and reasonably impose under State law relating to such appropriations of said water. That this judgment is not intended to, and does not in anywise interfere with, restrict, or limit the lawful discretion of the State Engineer in acting upon all such applications and the issuance of permits and licenses pursuant thereto and in conditioning the same in the interest of the people of this State.

IV.

The Madera Irrigation District is a lawfully organized and existing irrigation district organized and existing under the laws of the State of California with the capacity to contract with the Federal Government, but only to the extent permitted by State Law. That no such contract is valid to the extent that it is inconsistent with the law of this State or in conflict therewith.

V.

That the notice of election published by the Madera Irrigation District for the election to be held on the 9th day

of May, 1951, was and is invalid, illegal and of no force and effect and that the election purportedly held on the 9th day of May, 1951, was improperly and illegally called and held in that, among other things, said notice did not designate or set forth the maximum amount of money to be paid by said District to the United States and, in particular, did not set forth or specify or indicate the properties of the District which were to be conveyed by the District to the United States, which such properties included a portion, if not all, of that certain irrigation system within said District known as the "Eminert System". That no approval of the purported contract marked "Exhibit A" could have resulted, or did result, from this said purported election. That said election was not duly or regularly held as provided by law and was not noticed as required by law. That the publication by the Board of Directors of said District of false and misleading statements concerning the provisions of said contract as set out in the Findings of Fact constituted a fraud, and the true results of said election cannot be ascertained.

VI.

That the water rights, real property and other properties and in particular the land, ground and site upon which Friant Dam is now built, together with a gravel pit and supply of gravel and material for construction of said Dam, together with rights of way and easements and water rights and filings upon waters of the San Joaquin River, as more particularly set forth and described in that contract dated the 24th day of May, 1939, and in the Findings particularly found upon, were acquired and held by the Board of Directors of Madera Irrigation District in

trust for all of the landowners within the boundaries of said District as said boundaries were then constituted; that said boundaries then contained all lands of the answering defendants herein.

VII.

That any right, title or interest which the United States acquired under and by virtue of the said contract dated the 24th day of May, 1939, in and to said properties and water and water rights was and is held in trust by the United States for the benefit of all landowners within the Madera Irrigation District and the owners of the 19,500 acres excluded from said District, including these answering defendants and their predecessors in interest.

VIII.

That the contract dated the 24th day of May, 1939, between Madera Irrigation District and the United States is a valid and existing agreement, subject to the trusts and limitations herein referred to and adjudged to exist.

IX.

That the right to receive a water supply pursuant to the contract dated the 24th day of May, 1939, was held by Madera Irrigation District as trustee for the use and benefit of all of the landowners within the District, together with the landowners of the 19,500 acres of land since excluded from said District; that all of the landowners within the Madera Irrigation District, together with the landowners of the said 19,500 acres of land, and including all of these answering defendants were and are the beneficiaries of said trust. That the purported transfer by Ma-

dera Irrigation District to the United States, in the document dated the 14th day of May, 1951, and before this Court for validation, of the pro rata share of the rights to receive a water supply pursuant to said 1939 contract for the 19,500 acres to the United States constitutes taking of property without due process of law and without just compensation.

X.

Prior to the execution of the contract dated the 24th day of May, 1939, and at all times subsequent thereto, Madera Irrigation District held as trustee for all of the landowners within the boundaries of said District, including the landowners of the said 19,500 acres excluded from said District, a vested right to a permanent supply of water from the San Joaquin River and other sources, appurtenant to all of the lands then in said District, subject to and in accordance with the laws of the State of California, by reason of applications to appropriate unappropriated water from said river and other sources duly filed by the said District or its predecessors, with the State Engineer, Division of Water Resources of the State of California; that the purported substitution by the contract marked Exhibit "A", dated the 14th day of May, 1951, now before the Court for validation, of a temporary right to receive project water from the United States in accordance with the terms of said contract marked Exhibit "A", in lieu of said appropriative rights to a permanent water supply, initiated by said District, in accordance with State law, constitutes a deprivation of property to the landowners within Madera Irrigation District and the landowners of the said 19,500 acres of land excluded from Madera Irrigation District to the use of said waters by reason of

the limitations imposed upon them by Articles 28, 29 and 30 of the contract without due process of law and without just compensation therefor and is a breach of the recited trusts.

XI.

That it was agreed between the United States and plaintiff Madera Irrigation District, by the contract dated the 24th day of May, 1939, that the owners of all of the lands within the boundaries of the plaintiff Madera Irrigation District, including the 19,500 acres excluded from the boundaries of the District were and are permanently entitled to delivery by the United States of the quantities of water set forth in this contract; that said contract right is binding upon the United States subject only to the assignment of a portion of said quantity of water to the Chowchilla Water District pursuant to the agreement dated the 24th day of August, 1949, accepted and approved by the Secretary of Interior of the United States on the 16th day of September, 1949, that the owners of said lands were, and are, entitled to the delivery of such quantities of water without any of the restrictions or conditions set forth in Articles 28, 29 and 30 of the alleged contract before the Court; that said contract right to receive said water is a continuing right to a permanent delivery of water from the project to all lands in said District, appurtenant to the lands irrigated, subject to and in accordance with the laws of the State of California; that the United States is entitled to payment therefor at the rate of not to exceed $3.50 per acre foot for Class 1 water and $1.50 per acre foot for Class 2 water, which waters are defined in said contract dated the 24th day of May, 1939; that said

Madera Irrigation District and the landowners, and each of them, are entitled to a credit to the extent of such payments by the United States toward the discharge of the District's share of the construction costs of the Central Valley Project as more particularly hereinbefore and hereinafter set forth.

XII.

In order for the United States to carry out the purposes of the Central Valley Project, particularly the delivery of water therefrom to project beneficiaries, including plaintiff District and its landowners, it became desirable and expedient that the State of California assign in trust to the United States for the uses and purposes of the Central Valley Project applications to appropriate unappropriated water and the water rights referred to in Findings XII, XVII, XXV, XXVI, and XXVII and also to acquire other applications and the appropriative and other rights to water referred to in Findings VI and VII and to perfect all such applications by securing permits pursuant to the laws of the State of California, for the use of all such water by said project beneficiaries, including the plaintiff District and the landowners therein and the landowners of the 19,500 acres now excluded from the District. All rights to the use of water heretofore acquired by the United States for the purposes of the Central Valley Project, as well as all rights to the use of water in process of acquisition and to be acquired for such purposes, are held by it in trust for the beneficiaries of said project, including the plaintiff District and its landowners and the landowners of the 19,500 acres more recently excluded from the District, all of whom have a present and

vested right to the faithful fulfillment and execution of said trust. That for the last several years, water has been delivered through the Central Valley Project by the United States Bureau of Reclamation to the plaintiff District and its landowners for the irrigation of lands within the District; and subject to the laws of the State of California and the discretionary powers of the State Engineer in issuing permits and licenses, said District and its landowners, and the landowners in said 19,500 acres excluded from said District, have acquired vested and existing property rights to a permanent supply of project water, which said rights are now vested in said landowners as appurtenances to their land, subject only to those reasonable conditions imposed by State Law, and to a defeasance upon failure of use; that by the transfer to the United States by the District of the rights of the District to appropriate water pursuant to its applications which had theretofore been filed with the State Engineer of the State of California, the owners of land within the 19,500 acres excluded from the District, and the District on behalf of its landowners, have acquired and now possess additional vested property rights to a permanent supply of project water in addition to those originating in the filings made by the Director of Finance of the State of California.

XIII.

Any and all rights to the use of water acquired or to be acquired by the United States for purposes of said project are held in trust and dedicated to carrying out the purposes and objects of said project, including the delivery of said water to plaintiff District and its landowners, and the landowners of the 19,500 acres excluded from said District;

and such water is required to be delivered to such lands for use thereon and as appurtenant to the lands irrigated thereby, subject only to conditions lawfully imposed in accordance with the law of this State, and under the burden of repayment to the United States of the reasonable charges for storing and transporting such appropriated water.

XIV.

Permits issued to the United States pursuant to the applications to appropriate unappropriated waters for the Central Valley Project vest in the United States rights as trustee only, with the beneficial title to such waters in the landowners within the service area of the project. The owners of any and all lands within the Madera Irrigation District, and of the 19,500 acres excluded, are entitled to equal rights to receive water from such project without discrimination and to apply such water upon their lands, subject only to lawfully imposed conditions in accordance with State law, and the payment of charges sufficient to return to the United States its due proportion of the reimbursable and returnable costs of the project.

XV.

The Secretary of Interior in constructing, operating and maintaining the Central Valley Project has at all times been, and now is, under mandate from the Congress of the United States to proceed in accordance with the laws of the State of California in acquiring rights to the use of water for purposes of said project and to hold and retain such applications, rights and interests not for its own use and benefit but for the use and benefit of the beneficiaries of the Central Valley Project, including the plaintiff Dis-

trict and the landowners therein, and the landowners of said 19,500 acres excluded from said District. The right, title and interest, and ownership of all rights, to the use of water acquired or to be acquired by the United States for the purposes of said project, immediately upon the acquisition of such rights, gave, and do give, rise to a resulting trust, with the State of California, as the trustor, the United States, acting through the Secretary of the Interior and the United States Bureau of Reclamation, as trustee, and the landowners contemplated to be served with water by means of the project as the beneficiaries of such trust; and the United States as trustee for all project beneficiaries has the duty and obligation, which it has failed yet to perform, to perfect its applications to appropriate water in accordance with the law of this State.

XVI.

The operation of the Central Valley Project as authorized, done and maintained by the United States is a Federal assistance program, and the Secretary of the Interior in expending Federal funds for the construction, operation and maintenance of the project, has so done, and is doing so, subject to ultimate appropriate repayment by the ate, or local Districts and agencies thereof, of the reimbursable costs of the project in accordance with the Federal Reclamation laws.

XVII.

The United States has the right, duty and obligation to recover, in accordance with the Federal Reclamation laws, that portion of the reimbursable project construction costs allocated to irrigation and assigned for repayment by the

water users; and the District and all landowners therein, including the defendant landowners herein appearing, are obligated to pay for a proportionate share of the cost of delivery of project water, and a proportionate share of the project construction costs, and in the payments made for such purposes are entitled to credit for that portion of payments which should appropriately be applied to the repayment of project construction costs.

XVIII.

The District and its landowners upon the repayment of a proportionate share of the project construction costs are entitled, subject to compliance with State law, including such reasonable conditions as may be imposed by the State Engineer in permits and licenses to use the water, to the continued delivery of project water by the United States as a right appurtenant to all of the district lands at such rates only as may be required to cover the District's proportionate share of the costs of operation and maintenance.

XIX.

The directors of the District in the management of the affairs thereof, and in the delivery of water made available by the project to the landowners therein, are governed solely by the laws of the State of California relating to irrigation districts.

XX.

The District is an organization created and governed by and for the electors thereof and bears a trust relationship to the landowners therein and in carrying out such trust is obligated by the law of this State relating to irrigation districts, to deliver the water received by it from

said Central Valley Project to each parcel of land within the District regardless of the size thereof, in the proportion that District assessment on each parcel bears to the entire District assessment on all lands within the District.

XXI.

In dealing with irrigation districts and other users of project water for irrigation, the Legislature of this State may not, consistent with the California Constitution, and particularly Article IV thereof, delegate to Congress the power to legislate relative to the use of such water in contravention of the law of California, nor authorize the Secretary of the Interior to enforce regulations of the Department of Interior relative to the use of project water in contravention of the laws of this State.

XXII.

Subject to the rights of the State of California and the Water Project Authority of the State of California, as recited and found in Paragraphs XIII and XVII of the Findings herein, the United States and the plaintiff District may lawfully enter into a contract for the delivery of water and repayment by the District to the United States of that portion of said project costs properly allocated to irrigation and assigned for repayment by the water users, and found by the Secretary of the Interior to be within the ability of the water users to repay, and providing for an annual charge by the United States to the plaintiff District, including construction charges, and operation, maintenance and overhead charges, allowing credit for the payments made by the District upon such charges and providing that when such charges have been paid in full no further con-

struction charges shall be collectible from the plaintiff District or the landowners therein.

XXIII.

The United States may not, by virtue of its physical possession of the dams, reservoirs and main canals constituting the major works of said Central Valley Project, or by virtue of the possession of any other works necessary or useful in the delivery of stored waters of the Central Valley Project, withhold, waste, or otherwise prevent the application to beneficial use of Central Valley Project waters, but is obligated to conform to the laws of the State of California relative to the control, appropriation, use and distribution of the waters of the Central Valley Project, and in that connection is required to permit such water to be put to beneficial use in accordance with the laws of this State and to recognize any and all vested rights therein. In delivering Central Valley Project water, the United States is subject to the authority of the State Engineer of the State of California as the executive officer of the Division of Water Resources of the Department of Public Works of the State of California as prescribed by the laws of this State in respect to the acquisition of rights to the use of water by appropriation and respecting the use of such water. Any and all rights to the use of water acquired or to be acquired, by the United States for purposes of the Central Valley Project are dedicated to carrying out the purposes and objects of the project, including the delivery of water to plaintiff District and its landowners and the landowners of said 19,500 acres so excluded from said District. The water delivered, and required to be delivered, to such lands is under a right appurtenant to the

lands upon which it is used, subject only to conditions lawfully imposed in accordance with State law, and to defeasance upon lack of use; but subject further, however, to the payment to the United States of the reasonable and appropriate charges in repayment of its reasonable and necessary construction, operation, maintenance and replacement costs.

XXIV.

The plaintiff District and the landowners therein are entitled, subject to the rights and interests of the State of California and its agencies, including the exercise of the lawful discretion of the State Engineer, to a contract for the delivery of water by the United States to all lands within the plaintiff District, which contract shall recognize and provide for a permanent and appurtenant water right, conditioned, among such other reasonable requirements as may be imposed, upon continued beneficial use, and additionally subject to a fixed maximum charge to be paid by the plaintiff District for the plaintiff's share of the construction costs of the major works of the Central Valley Project used or useful in the delivering of water to the plaintiff District, as such costs have been allocated to irrigation and in part assigned for repayment by the water users within their ability to repay the same, and in which contract a credit to the District upon such costs and a manner and method of accounting for such credit is provided for.

XXV.

It is adjudged to have been determined by the Secretary of the Interior, that to the extent that water may be available to the United States for such purposes, the plaintiff

District and its landowners subject to the discretionary powers of the State Engineer in issuing permits and licenses to appropriate waters as herein found and concluded, are entitled each year, under an appropriate contract, to not less than the quantities of Class 1 and Class 2 water as specified in Part A of the purported contract; and that the charges specified in Part A of the purported contract contain a component for the return by plaintiff District of some part of its proportionate share of project construction costs, and that such charges, pursuant to an appropriate contract, are reasonable and within the ability of plaintiff District and its landowners to pay and are adequate to repay to the United States; each year, an appropriate share of the necessary construction, operation and maintenance costs.

XXVI.

The following provisions of said contract of May 14, 1951, are invalid, void and without force or effect:

A. Article 20 of the contract, purporting to condition the delivery of water upon the payment of void assessments.

B. Article 22 of the contract, purporting to impose a penalty unknown to California law with respect to land which is in default in payments to the District although the District is not in default in its payments to the United States.

C. Article 6(c) of the contract, purporting to forbid the District from disposing of surplus water outside the District.

D. Article 9(c) of the contract, purporting to reserve to the United States the right to all waste, seepage and re-

turn flow which escapes or is discharged beyond the District's boundaries.

E. Article 11 of the contract, purporting to forbid the District from delivering or furnishing any water required under the contract for other than agricultural purposes.

F. Article 26 of the contract, purporting to forbid the District from making any change in its boundaries, such as by the inclusion or exclusion of lands.

G. Articles 28, 29 and 30 of the contract, purporting to forbid the District from furnishing water made available under the contract to any lands in excess of 160 acres, held by any single beneficial owner, unless the owner complies with certain further requirements, including the sale of all land in excess of said 160 acres at prices not in excess of those approved by the United States Secretary of the Interior.

H. Articles 19 and 21 of the contract, purporting to hold all lands within the District subject to an *ad valorem* tax to defray the charges imposed upon the District by the contract, notwithstanding the provisions of Articles 28, 29 and 30 of the contract, above mentioned, prohibiting the furnishing of water to land in excess of said 160 acres.

XXVII.

The contract of May 14, 1951, is invalid under State law, including the State Constitution, Article XIV, Section 3, for the following reasons:

A. Neither the contract, nor the notice of election which preceded it, contains or contained any statement of the maximum amount of money to be payable to the United States for construction purposes and cost of water supply

and acquisition of property, nor any provision for the crediting of the payments to be made under such contract to the cost of the project.

B. The contract does not provide for or recognize a water right appurtenant to the lands within the District; the contract contemplates and permits a continuing power in the Federal Government to furnish or withhold water at the end of the contract period upon such terms and conditions as the United States may then impose.

C. The contract is contrary to State law in that it purports to deprive the lands within the District, and particularly the lands of the landowner Defendants and those similarly situated, of present existing and vested water rights existing under and by virtue of the laws and the Constitution of this State.

XXVIII.

The contract of May 14, 1951, is invalid and unenforceable because the numerous provisions, purporting to vest an uncontrolled discretion in the Secretary of the Interior, are so ambiguous, indefinite, uncertain and lacking in mutuality as to obviate any basis of contractual undertaking recognized by the laws of California.

XXIX.

The provisions of said Irrigation District Federal Cooperation Law (State Water Code, Section 23197) authorizing the inclusion of a contractual provision for the delivery and distribution of water under Acts of Congress and the rules and regulations established thereunder, authorizes such delivery and distribution only under such acts, rules and regulations as are consistent with the laws

of this State. The contract imposes conditions on the delivery and distribution of water which are inconsistent with State Law, the Constitution of the State of California, the Constitution of the United States, and the Reclamation Act of 1902.

XXX.

The contract of May 14, 1951, is invalid in that it provides that the Secretary of the Interior, pursuant to rule and regulation, may in relation thereto apply numerous unrepealed provisions of the Act of Congress of June 17, 1902, and acts amendatory thereof or supplementary thereto, all collectively styled the Federal reclamation laws, and generally referred to in the contract as the basis thereof; that the application to the contract of many of such provisions would adversely and materially affect the contract and the rights of the District and the landowners thereunder, in violation of the laws of the State of California.

XXXI.

The contract is in violation of Federal law in the following particulars:

A. Part A of the contract purports to be a utility contract for the sale of project water to persons in whom the right to the use of such water is already vested.

B. The contract does not state the total or any amount to be repaid by the District and its landowners of that portion of the reimbursable costs of the profit allocated to irrigation and assigned for repayment by the water users; and fails to provide credit for any part of the annual rates

for water to the repayment of the District's obligation for project construction costs.

C. The contract destroys the right of the District and its landowners to acquire the right to a permanent delivery of project water appurtenant to the land irrigated, the intendments of the contract being that at the end of 40 years no project water will be delivered to the District except in the discretion of the Secretary of the Interior.

D. The provisions of Sections 28, 29 and 30 of the contract relating to excess lands are in violation of Section 8 of the Reclamation Act of June 17, 1902, in that such limitations on the acreage to which water may be delivered is in violation of the laws of the State of California.

XXXII.

The contract by its terms and provisions is unenforceable for the reason that it is indefinite, uncertain, misleading and lacking in mutuality regarding the relationship of the parties toward each other with respect to project water and the relative rights and duties of the respective parties in connection therewith, and for the reason that it denies to the District and its landowners the assurances required of the United States in its trustee relationship toward project beneficiaries with regard to the rights of the District and its landowners to a permanent supply of project water appurtenant to the land irrigated.

XXXIII.

Part A of the contract, including the provisions limiting the term thereof to 40 years, is inseparable from Part B thereof, providing for a major and permanent investment

by the District in connection with the construction of a distribution system by the United States within the District for the distribution of project water to lands within the District, and the invalid provisions of the contract materially affect and are inseparable from other provisions of the contract.

XXXIV.

In the circumstances of this case, the failure of the United States to secure permits from the State for the use of project water has not, and may not be deemed to have, impaired the vested rights acquired by the Madera Irrigation District and the landowners therein, including the answering landowner defendants, to the continued use of the project waters. Pending the issuance of proper permits, the said District and its landowners may continue to receive and put to beneficial use project waters in the exercise of their vested rights therein.

XXXV.

That plaintiff District, its directors, officers, agents, servants, employees, attorneys and those persons in active concert or participation with them, or any of them, who receive actual notice of this judgment by personal service or otherwise be and they are hereby permanently enjoined from performing or taking any action to perform in behalf of said District the said contract or any part thereof and they are further enjoined from causing or permitting any work of construction to be done in or upon said proposed distribution system, under said contract, in such manner as to incur any liability upon the part of said District or the landowners therein.

XXXVI.

That the plaintiff District, its directors, officers, agents, servants, employees, attorneys and those persons in active concert or participation with them, or any of them, who receive actual notice of this judgment by personal service or otherwise be and they are hereby permanently enjoined from failing or refusing to supply the landowner defendants with water for irrigation purposes, with respect to all of their land within said District, upon the same terms and conditions tendered to all other landowners within the District, without discrimination by reason of the extent of their holdings of land, or on any other basis inconsistent with the findings of fact and this judgment made, signed, filed and entered herein.

XXXVII.

The delivery of water by United States to the plaintiff District at charges not to exceed $3.50 per acre foot for Class 1 water and $1.50 per acre foot for Class 2 water, and the collection of funds therefor, and the payment for the costs thereof by plaintiff District to the United States is not enjoined.

XXXVIII.

Defendants appearing herein are entitled to their costs of suit.

Dated: February 1st, 1954.

Benjamin C. Jones
Judge of the Superior Court, Assigned

(Endorsed) Filed Feb. 3, 1954,
Erma E. Cheuvront, Clerk
H. H. Dwyer, Deputy
9:30 A. M.

Appendix C-1

(Vol. 47 A.C. 698, 306 P.2d 894.)

[Sac. No. 6460. In Bank. Jan. 24, 1957.]

PHILLIP ALBONICO et al., Respondents, v. MADERA IRRIGATION DISTRICT (a Corporation) et al., Appellants.

APPEAL from a judgment of the Superior Court of Madera County. Arthur C. Shepard, Judge.* Modified and affirmed.

Proceeding in mandamus to compel an irrigation district to vacate its resolution denying exclusion from district of petitioners' lands in excess of acreage limitations. Judgment for petitioners modified and affirmed. [698]

SHENK, J.—This is an appeal from a judgment for the petitioners Phillip and Jane E. Albonico, husband and wife, in a proceeding for the writ of mandate to compel the respondent Madera Irrigation District to vacate its resolution denying the exclusion from the district of the petitioners' lands in excess of 320 acres. Exclusion is sought on the ground that such excess lands would not be benefited by the operations of the district. (Wat. Code, §§26728, 26729; Code Civ. Proc., §1085.)

A brief history of the Madera Irrigation District from the time of its inception is set forth in the companion case, *Madera Irr. Dist.* v. *All Persons, ante,* [1] p. —— [—— P. 2d ——]. That case involved the validity of a contract entered

*Assigned by Chairman of Judicial Council.

[1] Advance Report Citation: *Ante,* p. 685 [Herein p. 139].

into by and between the district and the United States acting through its Bureau of Reclamation of the Department of the Interior for the sale and distribution of water for irrigating purposes to the landowners in the district. Among other provisions of the contract considered in that case were the so-called acreage limitations and enforced sales provisions. In substance it was provided that a single person owning in excess of 160 acres and a married couple in excess of 320 acres are "large land owners"; that large landowners shall, within 30 days after notice to do so, select the 160 or 320 acres, as the case may be, of his or their lands to be deemed nonexcess; that if a large landowner fails to make such selection the district may do so for him and if the district does not do so, the Secretary of the Department of the Interior of the United States may do so, and that no water may be furnished by the district to excess lands unless and until the nonexcess portions thereof have been selected and the landowner has executed a recordable contract to sell or authorize the Secretary of the Interior to sell within 10 years the excess lands at an appraised sum which the landowner has no voice in determining and without regard to water rights involved in the irrigation project contemplated by the district and the United States.

Following a hearing on the 15th of April, 1951, at which the action of the board of directors of the district was reviewed and other evidence was received, the court made findings to the effect that the entire operations of the district in relation to the lands of the petitioners would be pursuant to the contract with the United States which, by sections 28, 29 and 30, did not contemplate the delivery of

water to the petitioners' excess lands unless they agreed to sell such lands; that "except [699] as to 320 acres thereof, the said lands of the petitioners sought to be excluded would not be benefited by the operations of the Madera Irrigation District"; that "no evidence was introduced" tending to show that such lands would be benefited, and that at the hearing before the board of directors of the District prior to its resolution denying the petition for exclusion there "was no evidence . . . to support [its] finding of fact that lands of the petitioners would be benefited by the operations of the Madera Irrigation District."

Judgment was entered in the alternative, first, "that if the general plan of operation of the Madera Irrigation District, as adopted and applied by the Board of Directors of the District, should continue or require compliance with the excess land conditions or limitations set forth in paragraphs 28, 29 or 30 of the Contract between the Madera Irrigation District and the United States . . . as a condition to petitioners receiving for all of their land their fair, ratable portion of the water distributed by the District for irrigation purpose, then, in that event, a peremptory writ of mandate shall issue from this Court directing and compelling the Board of Directors of the Madera Irrigation District to make its order vacating and setting aside its previous order of April 12, 1951, denying petitioners' petition for exclusion, and to make its order excluding from the Madera Irrigation District the lands of petitioners, except as to 320 acres thereof." In the alternative it was ordered that if the district's plan of operation should "supply all of the lands of petitioners their fair, ratable portion of the water distributed by the district for irriga-

tion purposes, without imposition of the excess land conditions or limitations set forth in paragraphs 28, 29, or 30 of the Contract . . . then and in that event, the writ herein prayed for shall be denied. . . .''

In view of our decisions in *Ivanhoe Irr. Dist.* v. *All Parties, ante,* [1] p. —— [—— P. 2d ——], and in *Madera Irr. Dist.* v. *All Persons, ante,* [2] p. —— [—— P. 2d ——], wherein it was held that excess land provisions in similar contracts were improperly included therein, it must be concluded in this proceeding that the district may not impose on landowners within the district the land limitations contained in sections 28, 29 and 30 of the contract in question, and that all of the petitioners' lands within the district are entitled to their fair, ratable portion of the water distributed and to be distributed by the district for irrigation purposes. (Wat. Code, §22250.) As the petitioners' lands will thus be [700] benefited by the lawful operations of the district under a proper contract for a supply of water to the district a writ of mandate to compel the exclusion thereof from the district is inappropriate and unnecessary. (Wat. Code, §§26728, 26729.)

The judgment is therefore modified by striking therefrom the first alternative by which the petitioners' land might be conditionally excluded and by affirming the second alternative pursuant to which the lands of the petitioners are entitled to their proportionate water supply.

As so modified the judgment is affirmed, the respondents to recover costs on appeal.

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[1] Advance Report Citation: *Ante,* p. 603 [Herein p. 1].

[2] Advance Report Citation: *Ante,* p. 685 [Herein p. 139].

Schauer, J., Spence, J., and McComb, J., concurred.

GIBSON, C. J., Dissenting.—For the reasons stated in my dissenting opinion in *Ivanhoe Irr. Dist.* v. *All Parties, ante,* [1]p. —— [—— P. 2d ——], I would reverse the judgment.

Traynor, J., concurred.

CARTER, J., Dissenting.—This is a companion case to *Ivanhoe Irr. Dist.* v. *All Parties, ante,* [2]p. —— [—— P. 2d ——], and for the reasons stated in my dissenting opinion in that case, I would reverse the judgment. [701]

[1]Advance Report Citation: *Ante,* p. 653 [Herein p. 64].

[2]Advance Report Citation: *Ante,* p. 603 [Herein p. 1].

Appendix C-2

In The Superior Court of The State of California
In and For The County of Madera

No. 8497

Phillip Albonico and Jane E. Albonico, his wife, Petitioners, vs. Madera Irrigation District, a Corporation, and John M. Allen, C. A. Ridgeway, Allen T. Roberts, Dee V. Romans, John A. Franchi, Directors of the Madera Irrigation District, Respondents.	No. 8497

Memorandum Opinion and Order.*

This cause comes on before the Court on the application of petitioners for a writ of mandate. Petitioners seek thereby to compel exclusion of 939 acres of their land from Respondent Madera Irrigation District (hereinafter spoken of as "District"), on the ground that said land would receive no benefit from the operations of said District.

Petitioners own a tract of 1,259 acres of land in District. They have owned, lived on and farmed said land for more than forty (40) years last past, and have paid assess-

*Unreported.

ments on all of said land to District for the past twenty (20) years.

District was organized January 2nd, 1920. It exists under authority of the California Irrigation District Act (Statutes 1897, Page 254) (Now incorporated under the Water Code of California).

During the early years of its existence, District acquired certain water rights, lands and other properties. The money necessary for such acquisition came from assessments on the lands in District, including the land owned by petitioners, which is here subject of dispute.

The current expenses of any water delivery and the repayment of any sums advanced to, or borrowed by, District, to construct canals, headgates or other works of District must likewise come from assessments against all the lands in District, including the land here under dispute. (Sections 25650, 25535 and 25803, Water Code of California) (Contract Sections 19 and 21).

On or about May 24th, 1939, District purported to enter into a contract with the United States through its Bureau of Reclamation (hereinafter spoken of as "Bureau"), whereby water rights and lands owned by district, along the San Joaquin River near Friant, were agreed to be conveyed to Bureau in consideration of the agreements by Bureau to construct a dam on said river for diversion, and a system of canals for delivery, of water from said river to the lands within district, and also in consideration of the payment, or, crediting on construction of works by Bureau for District, of a substantial sum of money. (Par. 3, Page 1, Contract)

On or about May 14th, 1951, District executed a contract with Bureau for the delivery to the lands in District of irrigation water from Bureau's San Joaquin River Friant Dam facility. Such contract forbids District to serve water to more than 320 acres of petitioners' land, unless petitioners agree to sell that part of their 1,259 acres which is in excess of 320 acres, to-wit, 939 acres, at a selling price controlled by an appraisement based on certain artificial factors defined by the contract, and is ultimately subject to approval by Bureau. (Sections 28, 29, 30 of Contract)

Petitioners allege, and at the hearing before this court it was not denied, that said contract is the only method planned by District for the furnishing of water to the lands in District, including the land here under dispute. It was also alleged, and evidence was adduced thereon by petitioners, that petitioners can derive no benefit for the excess lands here under dispute from the operations of the District under said contract. It was further stipulated that Respondent's Board of Directors might view said land. Said Board did view said land, and thereafter made its order denying petitioners' petition for exclusion of the said excess land of petitioners in said District.

The California Irrigation District Act provided at the time of its passage:

> "It is hereby expressly provided that all waters distributed for irrigation purposes shall be apportioned ratably to each land owner on the basis of the ratio which the last assessment of such owner for District purposes within said District bears to the whole sum assessed upon the district."

This provision of statute was later incorporated in Section 22250 of the Water Code. It has not been substantially changed since its first enactment in 1897, and is now in full force and effect. Sections 22250 and 22280, authorizing a water sales method, were added in 1943, but all of these sections contemplate equitable distribution.

It is clear that the principal purpose of the California Irrigation District Act and its successor, the Water Code provisions carried over from said Act, was and is to provide a means by which contiguous land owners might pool their interests under certain condition to obtain water for their lands and jointly pay for the same.

> "The whole object of the legislation authorizing the organization of irrigation districts is to enable owners of lands susceptible of irrigation from a common source, and by the same system of works, to form a district composed of such lands, for the sole purpose of obtaining and distributing such water as may be necessary for the irrigation thereof, thus enabling each one to have for his land in the district, the benefit of a common system of irrigation, and bringing about the reclamation of the land of the district from aridity to a condition of suitability for cultivation." (*Jenison v. Redfield,* 149 Cal. 500 at 503)

In defining the rights of land owners and of the District in connection with the holding by irrigation districts of water rights and other properties, the California Supreme Court said that districts hold said properties

> ". . . in trust for the uses and purposes set forth in the act; . . . the beneficiaries of the trust are the landowners in the district with whose funds the property has been acquired . . .; in whom, indeed is vested by

express provision of the statute, in each, the right to the several use of a definite proportion of the water of the district, and in all, in common, the equitable ownership of its water rights, reservoirs, ditches and property generally, as the means of supplying water. . . . Such rights as these cannot be distinguished in any way from other private rights, and therefore clearly come within the protection of Section 13 of Article I of the State constitution—that 'no person shall be . . . deprived of . . . property without due process of law,' and of the similar provision of Section 1 of the Fourteenth Amendment to the constitution of the United States."

Cited with approval in numerous other California cases. *Tulare Irrigation District v. Collins,* 154 Cal. 440; *Hall v. Supreme Court,* 198 Cal. 373.

Section 1 of Amendment XIV to the constitution of the United States provides, in part, as follows:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

The Fifth Amendment to the constitution of the United States provides, in part, as follows:

"No person . . . nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation."

Section 1 of Article I of the constitution of the State of California provides as follows:

"All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property; and pursuing and obtaining safety and happiness."

Section 13 of Article I of the constitution of the State of California, provides, in part, as follows:

"No person shall be . . . deprived of life, liberty or property, without due process of law;"

Section 14 of Article I of the California constitution provides, in part, as follows:

"Private property shall not be taken *or damaged* for public use without just compensation having first been made to, or paid into Court for, the owner, . . ."

The rights of owners of land in and to the property held by various irrigation and drainage districts are referred to in many cases throughout the United States, and it is worthwhile to here quote from a few of them:

"Private property rights acquired under statutes . . . are not subject to legislative invasion by means of new statutes." (*Mooney v. Drainage District No. 1*, 278 Northwestern 368 at 371 (Nebr. 1938))

In a case involving the receiver of a drainage district under state laws, the Supreme Court of North Carolina said:

"The general assembly . . . is without power, by the enactment of subsequent statutes, to affect vested rights of land owners . . ." (*Broadhurst v. Bd. of Commissioners of Pender County Drainage District*, 143 Southeastern 477 (N.C. 1928))

In a dispute between the United States Bureau of Reclamation and a landowner in an irrigation district over certain rights in the water of the La Plata River, the United States Circuit Court of Appeals said:

> "In the sense that the right to the beneficial use of such waters attaches to and follows the lands under the project or canal to which application is made, the appropriative rights may be said to belong to the land owners. This right to the beneficial use on the part of a landowner is, therefore, in the nature of a vested right." (*U. S. v. Tilley,* 124 Fed. 850 at 861 (Nebr. 1941))

In a case in which the Secretary of the Interior attempted to arbitrarily limit water delivery to about two-thirds of the water originally allotted to the landowners of a reclamation project on the Yakima River in the State of Washington, the United States Supreme Court said:

> "Appropriation was made, not for the use of the government, but, under the Reclamation Act, for the use of the landowners . . . the government was and remained simply a carrier and distributor of the water . . ." (*Ickes v. Fox,* 300 U. S., Page 82)

Without particular regard to irrigation districts, but on the subject, generally, of the protection of the rights granted by the constitutional sections quoted, a brief glance at some other cases is in order.

In a dispute over validity of a sale of land held in trust, where the legislature, by special act, attempted to authorize a sale of vested rights of persons sui juris contrary to the powers of trust, the Supreme Court of New York said:

> "Where the parties entitled to future estates are under no disability to act for themselves, the legislature has no constitutional power to cause lands to be sold by special act."
> (*Gedney v. Marlton,* 179 Northeastern 766 (N.Y. 1932))

In a case involving the application of a statute which sought to bar estates tail and reversions and remainders expectant thereon, the Court held that as to estates which have already vested before the passage of such Act, any attempted application is void and unconstitutional. (*Greer v. Edwards,* 77 Atlantic 188)

In another case involving attempted legislative disturbance of vested rights, the United States Supreme Court said:

> "The private rights of parties which have vested . . . cannot be taken away by subsequent legislation . . ." (*Hodges v. Snyder,* 261 U.S. 600 (1922))

In a case involving the already accrued liability of corporate directors and trustees for misappropriated funds, and the repeal by the legislature after such accrual of the law providing for such liability, the United States Supreme Court said:

> ". . . corporate charter may be repealed . . . ; and . . . the interrelations of state, corporation and stockholders may be changed; but neither vested property rights nor the obligations of contracts of third persons may be destroyed or impaired." (*Coombs v. Getz,* 285 U.S. 434 (Calif 1931))

In a case involving attempted restrictions upon the use of real property by Negroes, the United States Supreme Court said:

"It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own and dispose of property. Equality in the enjoyment or property rights was regarded by the framers of that amendment as an essential pre-condition to the realization of other basic civil rights and liberties which the amendment was intended to guarantee." (*Shelly v. Kraemer*, 334 U. S. 1)

In a case involving, more particularly, the Constitution of the State of California, the Supreme Court of California said:

"The conclusion is, that although a law is general and constitutional when it applies equally to all persons embraced in a class founded upon some natural or intrinsic or constitutional distinction, it is not general or constitutional if it confers particular privileges or imposes peculiar disabilities or burdensome conditions, in the exercise of a common right, upon a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law." (*City of Pasadena v. Stinson*, 91 Cal. 238 at 251)

In a case involving assessments for special public improvement, the Supreme Court of the United States said:

"There is a point beyond which the legislative department, even when exerting the power of taxation, may not go consistently with the citizen's right of property.

"In our judgment the exaction *from the owner of private property* of the cost of a public improvement in substantial excess of the special benefits *accruing*

to him is, to the extent of such excess, a taking, under the guise of taxation, of private property for public use without compensation." (Emphasis added) (*Norwood v. Baker*, 172 U.S. 269)

Respondents cite *Shoshone I. D. v. Lincoln Land Co.*, 51 Fed. 128, and *Nampa & Meridan I. D. v. Petrie*, 153 Pac. 425 (Idaho). The question in the case here at bar could have been considered in either of those cases, but a careful examination of both cases shows that the precise question was not considered in either of those cases, and they are of no substantial aid in solving the case at bar. No other case has been called to our attention which appears to involve the type of fact with which we are here confronted.

There are several questions involved in the case at bar, but the one relating to the validity of the so-called 160-acre limitation is, in the opinion of this Court, determinative of all others, and it is, therefore, the only one we shall discuss at length..

It must be remembered that we are not here concerned, nor is the Court attempting to pass on the wisdom of, nor the economic considerations involved in, the legislation relating to the so-called 160-acre limitation; nor are we here considering its validity as it might be applied to the public lands being sold into private ownership. Further, we are not giving any consideration to the question of its application where the private landowners involved have voluntarily consented to the provision. The question of the great desirability for larger numbers of our population to return to rural life is not before us. The question of whether or not there should or should not be a constitutional amendment to provide great land reforms in the

United States is a subject for political discussion, and is not before the Court in this cause.

The question which is before the Court in the case at bar is simply this: Is it constitutional and valid to include, by compulsory measures, into an irrigation district, the land of private land owners; to then levy assessments on that land for twenty (20) years in order to acquire the funds to purchase valuable property for the district; to then sell the property thus acquired to a third party under an agreement by which the third party and the district agree that about three-fourths of the land which has thus paid assessments for twenty (20) years shall not receive any water unless the owner agrees to sell said land at a figure artificially controlled by and subject to the approval of the third party, all without the owner's consent? A briefer way to state the question is:

Is the Provision of the 1951 Contract, Forbidding Water Service to Petitioners' Excess Acreage, Valid and Enforceable?

We are persuaded that if the name of the third party were a private individual, and not the Bureau of Reclamation of the United States Government, the question would not even be argued. Peculiarly, there sometimes seems to be in the minds of many individuals some sort of guarantee of fairplay wherever an official of the government is in control. But there is no magic in a name. Governments can be, and often are, even more despotic than individuals, with the wrong person in public office. A rule by law is the only guarantee of freedom.

It is clear from a glance at the authorities we have hereinbefore referred to, and from an examination of the history of the United States, that the people of these United

States have, from the very commencement of their national existence, considered the protection of the right to own, possess and enjoy property as being not only of great importance, but also worthy of considerable repetition in the Supreme Law of both the United States and of this State.

In our view, this attitude is entirely reasonable and is, in fact, the only rational one that a people desirous of preserving their freedom could take, for on such a constitutional mandate depends, in the last analysis, life itself.

Statements that personal rights are superior to or different from property rights are so much rhetorical sophistry, and indeed sound like a peregrination of Marxian philosophy. Deprecatory asservations about the position of vested rights in our social order are either ignorant maunderings or malignant deception. Talk of freedom of the press, freedom of speech, freedom of person, freedom from unlawful search and seizure, etc., is just so much banal persiflage, if one is not protected in his ownership and right to control and enjoy his property.

Man is a land animal—without land he cannot live. He breathes air, eats animal and plant food, drinks water (and on occasion other fluids), and adds to his enjoyment of life with books, music, sports, drama and a variety of social intercourse. All of these matters by which man's life is sustained and his enjoyment of life is perpetuated are the subject of property ownership and vested rights. It requires very little effort to understand that if it is constitutional to take or damage, without just compensation, the land that a man has owned and improved for forty (40) years, or forty (40) months, or even forty days, then

it is just as constitutional to take, without just compensation, the bread, the meat and potatoes that a man has earned and lawfully possessed himself of to feed himself and his family. Today the spectacle of ruthless government seizure of food from the very mouths of starving Chinese should serve as a grim reminder of what power-mad governments can and will do if not curbed by a vigilant and militant public supporting the constitutional guarantees of their freedom.

On the scholastic or enjoyment side of life, we have innumerable examples of the workings of man's autocratic mind when unfettered by the sobering influence of constitutional safeguards for the right of property. Soviet ruthlessness in the destruction of priceless libraries containing works of science, art and religion, is common knowledge, and in bygone ages this same destruction of the recorded knowledge of man has been repeated many times.

Hitler, with his anti-Semitism and seizure of the art and book treasures of France, Cortez with his treachery to Montezuma and almost complete destruction of the historical records of the Aztecs, and Nebuchadressar (whom we now call Nebuchadnezzar) at Jerusalem, are a few far-spaced examples of how man's bigotry, unrestrained by basic law, has repeatedly crushed and blotted out the recorded knowledge of man slowly accumulated through the ages. Time after time treasures in the field of music and art have suffered the same fate. Neros have never been confined to any particular era of man's existence, nor to any special nation. When Cicero said that:

> "History is the witness of time, the light of truth and the life of memory",

he pointed out to us a valuable guide with which to search for and recognize the continuing propensities of man, equipped with autocratic power. From this same guide of recorded experience, we should also know that to break down our constitutional guaranties by loose reasoning in one respect means that the whole structure will soon become a flimsy sieve of meaningless words.

The examples thus given are but an infinitesimal fraction of the incidents history has recorded of governmental seizure of private property without just compensation. A good share of these seizures have been in the name of "public good", or "national welfare". Most of them have been by professed "do-gooders" whose visions of Utopia blind them to the rough and rugged path of reality which must be trod to reach even the fringes of their dream world. It is the old story of the impatient demagogue who will not discipline himself within due bounds, and who shrugs his shoulders at the broken principles and distorted views and the misery caused by his blunderings, and says, in order to excuse himself, "the end justifies the means".

The United States, under a rule of constitutional protection of all man's basic rights, has experienced greater progress toward the comfort and safety and freedom of the common man than was had in the previous two thousand years. If, at any time, our constitutional restrictions need altering, we have the means at hand to change our constitutions as we have already demonstrated twenty-two times nationally, and hundreds of times in the State of California. In our view, if it is constitutional and valid to say to a man who has acquired more than 160 acres of land:

> "you must sell your excess land at a figure controlled by us, or we will deny you any further governmental service",

then it is just as constitutional to say again:

> "You have reduced your acreage to 160, but we now demand that you reduce it to 16 acres, or we will render you no governmental service";

and again, still later, it would be constitutionally feasible to say:

> "You reduced your land to 160 acres, and again reduced it to 16 acres, and we now demand that you reduce it to 1.6 acres".

If it is thus constitutional to mandatorily compel the sale of excess land at an artificial price, then it is constitutional and valid for the government to say:

> "You own two newspapers; you are too powerful. Sell one of your newspapers at a price artificially controlled by us, or we will deny you any further paper stock from wood taken from the National forests";

and just as constitutionally might the government say:

> "You have two automobiles. Sell one at a price controlled by us or you will get no more gasoline, and in order to enforce this, all producers of petroleum from government land must sign an agreement that no one will receive gasoline for more than one automobile."

Just as easily, it might be two or four or six or eight head of cattle, horses, swine or sheep which would become the subject of such artificial government mandate dreamed up by the head of some other bureau, and sold by specious reasoning to a supine legislative body.

The argument might be advanced that there is no taking of property because the owner is allowed to sell it, but the fact remains that the price is controlled by artificial factors, and that the Secretary of Bureau can veto any price arrived at by appraisers. A complete examination of the various paragraphs controlling this limitation shows quite clearly that the owner has never had his day in Court for a fixation of price; that the long years of assessment payments to build up the property of District are not taken into account; and, further, there is no pretense that the land is being taken for public use after the payment of just compensation.

It is our opinion that the 160-acre limitation clauses of the contract, when attempted to be applied to property which was in private ownership before the contract was negotiated, and without the consent of the owner as in the case at bar, are contrary to and in violation of the Supreme Law of both the United States and the State of California, both as to the specific sections hereinbefore quoted and as to the whole spirit of our constitutional liberty; and, are, therefore, when attempted to be so applied, void and of no effect.

A careful examination and analysis of the whole contract and of the position of the parties, reveals no valid reason why this clause is not severable. Therefore, we see no reason why the contract as a whole need be vitiated. In all other respects it appears to be valid.

If the 160-acre limitation were to be held valid and actually applied, then, of course, by all the rules of fair conduct and decent, honest treatment, which are and must be the basis of all law governing a free people, petitioners should be entitled to exclusion.

However, since it is our opinion that the clause in question is, as to the property here involved, invalid and unenforceable, we are compelled to and do hold that petitioners cannot legally be denied their fair division of the water belonging to District, and that they are, therefore, not entitled to have the 939 acres of land excluded.

The writ is denied.

DATED: 21 November, 1951.

ARTHUR C. SHEPARD (Signed)
Judge of the Superior Court

Attorneys for respondents will draw findings and judgment.

ACS

Appendix C-3

In the Superior Court of the State of California in and for the County of Madera

No. 8497

Phillip Albonico and Jane E. Albonico, his wife,

Petitioners,

vs.

Madera Irrigation District, a corporation, and John M. Allen, C. A. Ridgeway, Allen T. Roberts, Dee V. Romans and John A. Franchi, Directors of the Madera Irrigation District,

Respondents.

JUDGMENT*

An alternative writ of mandate having issued herein on the 14th day of May, 1951, in the above entitled matter, and the same having come regularly before the Court for hearing on the 8th day of June, 1951, in the Superior Court of the State of California, in and for the County of Madera, pursuant to an order to show cause issued in connec-

*Clerk's Transcript pp. 34-36.

tion with said alternative writ of mandate, Green, Green, Plumley & Kuney, by Denslow Green and Kenneth A. Kuney, appearing as attorneys for petitioners, and David E. Peckinpah and L. N. Barber appearing as attorneys for respondents, and the Court having heard the testimony and having examined the proofs offered by the petitioners, and the Court being fully advised in the premises, and having filed herein its findings of fact and conclusions of law, and having directed that the writ prayed for herein should be granted if the respondent Board of Directors of the respondent Madera Irrigation District continues to apply the present general plan of operation of the Madera Irrigation District; now, therefore, by reason of the law and findings aforesaid:

It is ordered, adjudged and decreed that if the general plan of operation of the Madera Irrigation District, as adopted and applied by the Board of Directors of the Madera Irrigation District, should continue to require compliance with the excess land conditions or limitations set forth in paragraphs 28, 29, or 30 of the Contract between the respondent and the United States (petitioners' Exhibit 4, herein) as a condition to petitioners receiving for all of their land their fair, ratable portion of the water distributed by the District for irrigation purposes, then, in that event, a peremptory writ of mandate shall issue from this Court directing and compelling the Board of Directors of the Madera Irrigation District to make its order vacating and setting aside its previous order of April 12, 1951, denying petitioners' petition for exclusion, and make its order excluding from the Madera Irrigation District the lands of petitioners, except as to 320 acres thereof.

It is further ordered, adjudged and decreed that if the general plan of operation of the Madera Irrigation District, as adopted and applied by the Board of Directors of the Madera Irrigation District, should supply all of the lands of petitioners their fair, ratable portion of the water distributed by the District for irrigation purposes, without imposition of the excess land conditions or limitations set forth in paragraphs 28, 29, or 30 of the Contract between the respondent and the United States (petitioners' Exhibit 4, herein), then, and in that event, the writ herein prayed for shall be denied.

It is further ordered, adjudged and decreed that petitioners have and recover of the respondents their costs and disbursements in this action, amounting to one hundred forty-nine and 45/100 Dollars.

Dated this 28th day of January, 1952.

Arthur C. Shepard,
Judge of the Superior Court

Filed January 29, 1952.

Appendix D-1

(Vol. 47 A.C. 701, 306 P. 2d 875 (1957).)

[L. A. No. 22761. In Bank. Jan. 24, 1957.]

THE SANTA BARBARA COUNTY WATER AGENCY, Respondent, v. ALL PERSONS AND PARTIES etc., Defendants; MAURICE A. BALAAM, et al., Appellants.

APPEAL from a judgment of the Superior Court of Santa Barbara County. Charles F. Blackstock, Judge.* Affirmed in part and reversed in part.

Proceeding by a county water agency to secure a judicial determination of the legality of the establishment of such agency and its member units and the validity of a master contract between the agency and the United States and member unit contracts entered into between the agency and city and county water districts. Judgment for plaintiff affirmed insofar as it declared validity of existence of agency and member units, and reversed insofar as judgment declared validity of contracts. [704]

SHENK, J.—This is an appeal from a judgment for the plaintiff Santa Barbara County Water Agency confirming the validity of a so-called "Master Contract" between the agency and the United States, acting by and through the Bureau of Reclamation of the Department of the Interior, and five so-called "Member Unit Contracts" between the plaintiff and each of five public bodies, namely, the city of Santa Barbara, and the Carpinteria, Summerland, Montecito and Goleta County Water Districts.

*Assigned by Chairman of Judicial Council.

The plaintiff as petitioner commenced this proceeding on February 8, 1950, pursuant to section 11.10 of Santa Barbara County Water Agency Act (Act 7303, Stats. 1945, p. 2780; amended by Stats. 1949, p. 18) to secure a judicial determination of the legality of the establishment of the agency and its member units, and the validity of the master contract and the five-member unit contracts entered into by the agency. Such a determination is required by article 35 of the master contract, by article 36 of each of the member unit contracts, and by federal law (Omnibus Adjustment Act of 1926, §46, 44 Stats. 649, 650, 43 U.S.C. §423e). It is a special proceeding *in rem* and summons was by publication. It was brought against all persons having or claiming to have any interest in the formation of the agency, in the proceedings of the various contracting entities leading to the execution of the contracts, in the operation of the proposed contracts and in the property affected thereby. A final judgment will foreclose further inquiry into the matters to which the judgment properly relates, and within its legitimate issues it will be binding on the world at large. (*Ivanhoe Irr. Dist.* v. *All Parties*, *ante*, [1]p. —— [—— P. 2d ——] and cases there cited.) The answering defendants are Maurice A. Balaam, Ted R. Holden, William G. Sudden, W. G. Moore, R. E. Sudden, [705] Charles E. Sudden and L. H. Crandall. The default of all other defendants was duly entered on May 1, 1950.

The petition alleged six causes of action each seeking the confirmation of one of the contracts involved. The defendants demurred to each count on both general and

[1]Advance Report Citation: *Ante*, p. 603 [Herein p. 1].

special grounds. The demurrers were overruled. The defendants' answer denied the validity of the formation of the plaintiff agency, certain proceedings of the board of directors of the agency leading to and including the signing of the master contract, the master contract itself, the proceedings of the respective boards of directors of the different member units leading to and including the signing of the respective member unit contracts and the validity of each of the member unit contracts.

The defendants also pleaded nine affirmative defenses to each of the causes of action. In substance it is alleged: (1) that provisions in the member unit contracts authorized by the Santa Barbara County Water Agency Act, whereby the agency will levy ad valorem taxes on all property in the agency to establish a fund from which contributions will be made to the member units, violate the constitutional provisions against legislative gifts and authorization of the imposition of local taxes by special legislation (art. IV, §13 and art. XI, §12 of the state Constitution); (2) that the Santa Barbara Water Agency Act purports to give the agency the power to levy ad valorem taxes on all property in the city of Santa Barbara and the various county water districts in violation of the constitutional prohibition of the imposition of taxes on individuals or property within public corporations for municipal purposes (art. XI, §12 of the state Constitution); (3) that the Santa Barbara Water Agency Act is unconstitutional in that it subjects the defendants to taxation and assessment on lands which cannot possibly be benefited from the construction of the project; (4) that any determination, legislative or otherwise, that the defendants' lands will be benefited by the

project is arbitrary and contrary to any rational view based on evidence of investigation; (5) that the contracts provide for no distribution of water to parcels owned by a single person in excess of 160 acres, but that the excess lands are nevertheless subject to taxation for project purposes; (6) that the contracts are impossible of performance and lacking in consideration; (7) that the contracts (except the city of Santa Barbara Member Unit Contract) purport to prohibit the exclusion from the district of lands not benefited by the project, without the consent of the Interior; [706] that section 23202 of the Water Code condones such provisions, and that both the contracts and section 23202 violate the Fourteenth Amendment of the federal Constitution and constitute an unlawful delegation of legislative power under the state Constitution (art. IV, §1); (8) that the provisions of section 9(c)(2) and 9(e) of the Reclamation Project Act of 1939 (53 Stats. 1187, 43 U.S.C. §485), pursuant to which the contracts purport to have been executed, constitute an unconstitutional delegation of power to the Secretary of the Interior, and (9) that those provisions of the contracts which provide that the United States is entitled to all waste, seepage, and return flow water derived from water supplied under the contracts to the member units through the agency, are invalid under the federal reclamation laws and the law of the state which make such waters appurtenant to the lands irrigated.

The agency demurred generally to each of the affirmative defenses and the demurrers were sustained.

The causes were tried on November 14, 1951, and a judgment was entered on October 22, 1952. The judgment declared (a) the legality of the organization and existence

of the agency, the city of Santa Barbara and the four county water districts, (b) the due execution of the six contracts, (c) the lawfulness of the contracts, and (d) that the defendants had waived and were estopped from asserting the illegality or unconstitutionality of the agency and of the Santa Barbara County Agency Act. The defendants have appealed from all portions of the judgment. The Attorney General of the State of California has appeared as amicus curiae in support of the judgment, and the Di Giorgio Fruit Corporation has appeared as amicus curiae asserting the invalidity of the contract.

The county of Santa Barbara is situated in a semi-arid portion of Southern California. It has no common source of water supply that can serve the entire county but contains numerous non-contiguous watersheds. The county has grown greatly in population and developed an economy requiring full utilization and development of all available water supplies. For many years the county made investigations and engineering surveys of its water resources utilizing private, public and United States engineers for that purpose. Pursuant thereto, in June, 1945, a comprehensive water development plan for the county was submitted by the Bureau of Reclamation, and the Santa Barbara County Water Agency was formed by the Legislature in 1945 to carry out the plan. The agency's boundaries are coextensive with those of the [707] county and the lands served by all member units lie within its boundaries.

Commencing in 1946 the agency began negotiations for a water supply from the Cachuma Unit of the Santa Barbara County Project, described in House Document Number 587 of the 80th Congress, 2d Session of April 1, 1948. That

document reveals that the Cachuma Unit will consist of the Cachuma Dam and Reservoir on the Santa Ynez River, the Tecelote Transmountain Diversion Tunnel and the South Coast Conduit; that it is to be constructed, operated and maintained by the Bureau of Reclamation, pursuant to federal reclamation laws; that the water to be diverted for purposes of the project is unappropriated water to be appropriated under state law, and that the estimated cost of construction of the Cachuma Unit, exclusive of irrigation distribution works, is $28,610,000. This amount is to be reimbursed to the United States by payments for water in excess of the costs of upkeep, operation and maintenance over a period calculated not to exceed 50 years. It is apparent that what we have said in *Ivanhoe Irr. Dist.* v. *All Parties, ante,* [1]p. —— [—— P.2d ——], is equally true in the present case, namely, that the relationship between the parties is that of debtor and creditor, contemplating a state project to be eventually owned and operated locally, and that the domestic water herein appropriated for beneficial use must be and can only be devoted to a use consistent with the purpose of the appropriation and the trust relationship existing between the United States and the water users entitled to service within the agency.

The contracts in question are for the furnishing of domestic water by a purveyor thereof at a stipulated price. They do not involve the construction of distribution systems, as in the Ivanhoe and Madera cases. (*Ivanhoe Irr. Dist.* v. *All Parties, ante,* [1]p. —— [—— P.2d ——]; *Madera Irr. Dist.* v. *All Persons, Ante,* [2]p. —— [—— P.2d

[1]Advance Report Citation: *Ante*, p. 603 [Herein p. 1].
[2]Advance Report Citation: *Ante*, p. 685 [Herein p. 139].

——].) The master contract contemplates a supply of water for irrigation, municipal, domestic, industrial and other uses to be furnished and delivered to each member unit of the agency for a period of 40 years, specifying delivery points; time of delivery and maximum rates for various classes of water. The agency is charged with the payments for all water delivered to member units. Provisions other than those specifically objected to by the defendants in their affirmative defenses provide for [708] the storage of water, availability of excess water, responsibility for water shortage, the recognition by the bureau of existing water rights, transfers of water by member units, defaults in payments, inspection of books and records by the bureau and other provisions not here material.

The member unit contracts, identical in form, are in general repetitions of the master contract except as to the contracting parties and the changes made necessary by the substitution thereof. Payments for water to be delivered are to be made by member units to the agency. Those features of the master contract which are objected to are contained also in each of the member unit contracts.

A preliminary question relates to the validity of the Santa Barbara Water Agency Act and the existence of the contracting entities. The contracts require that the agency and the member units initiate legal proceedings which seek not only the confirmation of the contracts but also the confirmation of the legality of the organization of the agency and the member units. As previously noted the defendants contend in their first affirmative defense that the act violates section 31 of article IV of the Constitution, which prohibits legislative authorization for the donation

of public funds. Section 10.2 of the act provides in part that the agency shall have the power to expend any or all of the funds or contributions in aid of: (a) the construction or payment of the cost of works; (b) the purchase or obtaining of water or a water supply; and (c) the payment of any liability "assumed as principal, guarantor, or underwriter on an indebtedness in connection with such construction, payment, purchase or obtaining; if such works are constructed or said water or water supply is obtained for or on behalf of the agency or its member units. . . ." In accordance with the above and other provisions of the act (see § 5.1) the agency has agreed in its contracts to pay for water furnished to member units to the extent of $100,000 annually, prorated among the member units in accordance with their respective annual payments to the agency. This, it is contended, constitutes a gift of public funds and a violation of section 31, article IV.

It is the general rule that a contribution from one public agency to another for a purely local purpose of the donee agency is in violation of the constitutional prohibition, but that such a contribution is legal if it serves the public purpose of the donor agency even though it is beneficial to local purposes of the donee agency. (*Pacific Mutual Life Ins. Co.* v. *County of San Diego,* 112 Cal. 314 [41 P. 423, 44 P. 571].) Thus in *City of Oakland* v. *Garrison,* 194 Cal. [709] 298 [228 P. 433], payment by the county of Alameda to the city of Oakland to improve a street entirely within the city was held to be proper where the county board of supervisors found it would be for the general good of the county. And in *County of Los Angeles* v. *Riley,* 6 Cal.2d 625 [59 P.2d 139, 106 A.L.R. 903], it was

held that the state could impose a statewide tax on motor vehicles and then apportion some of the proceeds to the counties for local use because a statewide public purpose was being served. "The determination of what constitutes a public purpose is primarily a matter for legislative discretion [citations] which is not disturbed by the courts so long as it has a reasonable basis [citations]. This court has frequently upheld the expenditure of funds by the state, or by its subdivisions for the benefit of individuals as for a 'public purpose' and hence not within section 31 of Article IV." (*County of Alameda* v. *Janssen*, 16 Cal.2d 276 at 281 [106 P.2d 11, 130 A.L.R. 1141]; see also *County of Los Angeles* v. *La Fuente*, 20 Cal.2d 870, 876 [129 P.2d 378]; *California Emp. Stab. Com.* v. *Payne*, 31 Cal.2d 210, 216 [187 P.2d 702].)

That the conservation and beneficial use of the domestic waters of this state serve a public purpose is without question. (Const., art. XIV, § 3.) The legislative determination that those provisions of the act whereby the agency could expend funds in assistance to member units in furtherance of the public purposes served by the act is entitled to a strong presumption of constitutionality and nothing appears herein to dispel that presumption. The financial assistance of the agency in making the overall plan economically feasible to the member units is a proper means of effecting the public purpose for the general good of the whole of the area served by the agency.

It is next contended by the defendants in both their first and second affirmative defenses that the act creating the agency is in violation of article XI, section 12 of the Constitution, which forbids the Legislature to levy taxes on

public corporations, or upon the property thereof, "for county, city, town, or other municipal purposes but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes. . . ."

The limitations of section 12 do not prevent the Legislature from authorizing a district to impose taxes for a state purpose (*Joint Highway Dist. No. 13* v. *Hinman*, 220 Cal. 578, 588 [32 P. 144], nor for a purpose that transcends the boundaries of the various municipalities that may be included [710] within the limits of a larger district (*Henshaw* v. *Foster*, 176 Cal. 507, 511 [169 P. 82]; *Pixley* v. *Saunders*, 168 Cal. 152 [141 P. 815].) In view of the declaration of section 3, article XIV of the Constitution, that "because of conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare . . .," it is contended by the agency that it serves more than a "county, city, town or other municipal purpose" within the meaning of section 12, and that the constitutional prohibition is therefore inapplicable in the present situation. This contention has support in the legislative and decisional law of the state. In spite of numerous enactments for the conservation of water wherein the power to levy taxes and assessments was conferred on an agency of the state, and in numerous cases where the constitutionality of such

enactments was questioned on various grounds, no case is referred to or has been found wherein a specially created district with taxing powers similar in scope to those of the present agency has been held to be unconstitutional by reason of section 12. *(Cf.* Municipal Home Rule in California, John C. Peppin, 34 Cal.L.Rev. 644.)

It is also contended that section 12 of article XI invalidates the power given the agency by section 10.3 of the act by levying a special tax solely within the defaulting member unit to cure the defaulted financial obligation owing the agency. But a larger district, in assessing benefits, can establish zones for that purpose in different portions of the district. (See *Los Angeles County Flood Control Dist.* v. *Hamilton,* 177 Cal. 119, at 128 [169 P. 1028].) The levy prescribed by section 10.3 of the act is a protection for the agency, is not local as to the member units but transcends their boundaries and does not violate the "municipal purpose" clause of section 12 of article XI. *(Pixley* v. *Saunders, supra,* 168 Cal. 152; *Pasadena* v. *Chamberlain,* 204 Cal. 653 [269 P. 630]; *County of Los Angeles* v. *Hunt,* 198 Cal. 753 [247 P. 897].)

It is also contended, although not specifically set out in any of the affirmative defenses, that the special enactment of the Santa Barbara County Water Agency Act is in violation of section 6, article XI of the Constitution, which provides in part: "Corporations for municipal purposes shall not be created by special laws; but, the Legislature shall, by general [711] laws, provide for the incorporation, organization and classification, in proportion to population, of cities and towns. . . ." The question is whether

the agency has been created for "municipal purposes" within the meaning of the above section.

It would appear from a reading of the section that the term "municipal purposes" has reference to the purposes of "cities and towns." Such a construction was applied by the court in *Turlock Irr. Dist.* v. *White*, 186 Cal. 183 [198 P. 1060, 17 A.L.R. 72]. There the court had before it the meaning of "municipal corporation" as employed in section 1 of article XIII of the Constitution. In defining that expression as not to include an irrigation district the court referred to section 6, article XI, and stated at page 188: "At the same election article XI, section 6, was amended by the people. This section restricts the power of the legislature in the formation of municipal corporations, to providing by general law for their formation, and prohibits the formation of such corporation by special statute. That section uses the term 'municipal corporation' as synonymous with 'cities and towns.'" (See also *Laguna Beach County Water Dist.* v. *Orange County*, 30 Cal.App.2d 740, 743 [87 P.2d 46]; *People* v. *Rinner*, 62 Cal.App. 747, 751 [199 P. 1066].)

Generally it is true that where the scope of a project transcends the boundaries of a municipality it ceases to be for a municipal purpose. (See *Pixley* v. *Saunders, supra*, 168 Cal. 152; *County of Los Angeles* v. *Hunt, supra*, 198 Cal. 753; *Gadd* v. *McGuire*, 69 Cal.App. 347 [231 P. 754].) In *Pasadena* v. *Chamberlain, supra*, 204 Cal. 653, involving the constitutionality of the Metropolitan Water District Act with respect to article XI, section 6, this court held that in the combined operations of several municipalities

under the act, "the municipalities engaged therein could not be held to be engaged in the conduct of a merely municipal affair." A similar conclusion was reached in *Van de Wiele* v. *Pridham*, 33 Cal.App. 252, 259 [164 P. 1136], relative to drainage ditches constructed partly within a city under the Drainage Act of 1903; and in *Pasadena Park Imp. Co. v. Lelande*, 175 Cal. 511 [166 P. 341], relating to a protection district (Stats. 1895, P. 248) to protect against floods and including city lands. Numerous cases have established that special legislation in the creation of various types of districts dealing with water problems is not in contravention of the "municipal purpose" clause of section 6 of article XI. (*People v. Levee Dist No. 6*, 131 Cal. 30 [63 P. 676] [levee district]; *People* v. *Sacramento Drainage Dist.*, 155 Cal. 373 [103 P. 207] [drainage district]; [712] *Reclamation District No. 70 v. Sherman*, 11 Cal.App. 399 [105 P. 277], and *Peterson* v. *Board of Supervisors*, 65 Cal.App. 670 [225 P. 28] [reclamation districts]; *Barber* v. *Galloway*, 195 Cal. 1, 13 [231 P. 34] [combined irrigation, drainage and water distribution district, i.e., Palo Verde Irrigation District].)

It is noted that the cases have made distinctions between the meaning to be given to the terms "municipal corporations" or "municipal purposes," depending upon the particular section of the Constitution to which the definition relates. (See dissenting opinion by Chief Justice Beatty in *County of San Mateo v. Coburn*, 130 Cal. 631, at page 637 [63 P. 78, 621].) It is concluded that the agency is not performing a purely municipal function within the meaning of section 6 of article XI and the decisional law thereon.

The invalidity of the act is also urged by the defendants in their third and fourth affirmative defenses on the ground, generally, that the only lands receiving benefits thereunder are those within the member units; that considerable portions of land within the boundaries of the agency are not within any member unit and therefore are not benefited by the act, and that the levy of an ad valorem tax on all lands within the agency authorized by the act is a taking of property without due process of law. This contention has often been litigated under similar circumstances. The basic question relates to a proper finding of a benefit conferred on lands not directly served. In the present case the agency was created by a special act of the Legislature wherein it was determined what lands were to be assessed for the benefit of the public improvement. In such circumstances "the property owners are not entitled to a hearing on the question of benefits to the land included within the district for they are conclusively presumed to have been heard through their representatives in the legislature." (*Orosi Public Utility Dist., In re*, 196 Cal. 43, 50 [235 P. 1004].). Such a determination, however, cannot be arbitrary, capricious or without factual basis.

The basis of proper legislative determination of benefits conferred on all lands within a district is dealt with exhaustively in *Los Angeles County Flood Control Dist.* v. *Hamilton, supra*, 177 Cal. 119, and that case is determinative of the contentions in the present case. These claims of lack of direct benefit of all lands within the district were the same for all material purposes as those urged by the defendants in their third and fourth affirmative defenses. Beginning at page 123 this court stated: "The

warrant and justification for charging the cost of such improvement upon designated [713] lands is to be found, in theory at least, in the benefit to be derived by the lands assessed from the contemplated work. (*Reclamation Dist. v. Birks*, 159 Cal. 233, 241 [113 P. 170].) . . . The fixing of the district which is to bear the expense of a local improvement, and the mode in which such expense is to be borne and distributed, are primarily legislative questions. . . . But since the imposition of such costs finds its ground of sanction in the benefits conferred upon the lands charged, it may well be that the legislative conclusion should not be upheld where the court can see that it is contrary to any rational view of the facts, and that lands have been included that 'plainly could not by any fair or proper view of the facts be benefited.' . . .'' The court proceeded to examine the facts, noting that the district contained ''several separate and unconnected watersheds''; that it ''comprised a considerable area of mountainous land''; that much of the district lay ''above the plane of any flood waters which are to be anticipated,'' and that other lands were beyond the area of possible floods. Conceding that such lands could not be directly benefited, the court held that ''the benefit which would justify the inclusion of land within the district need not be so direct and immediate as is assumed in the argument of counsel opposing the validity of the act.'' In referring to numerous cases involving problems closely related to the present one, the court concluded that an ''examination of these cases will show that the courts have regarded an incidental or indirect benefit as sufficient to justify the imposition of a part of the burden of the improvement. Such indirect

benefit may result from the improvement of neighboring and surrounding land, and the consequent increase in the value of all land within the district. . . . The proper maintenance of the harbors by protecting them from flood damage, the preservation of the means of communication between the different parts of the district by guarding against damage to highways and bridges . . . these are purposes whose execution may well be of substantial and immediate benefit to all of the lands included within the district." As to the imposition of an ad valorem tax, the court had this to say, beginning at page 124: "It is thoroughly settled that the legislature may apply the *ad valorem* method of assessment, without any judicial inquiry into, or determination of, the extent of benefits. Recognizing that absolute equality cannot be attained under any system of taxation or assessment, the courts hold that constitutional requirements are satisfied by that approximation to equality which may fairly be thought to result from an assessment of the cost upon the property benefited in proportion to its [714] ascertained value. (*Burnett* v. *Mayor, etc. of Sacramento*, 12 Cal. 76, 84 [73 Am.Dec. 518]; *In re Madera Irr. Dist.*, 92 Cal. 296 [27 Am.St.Rep. 106, 14 L.R.A. 755, 28 P. 272, 675]; *Thomas* v. *Pridham*, 171 Cal. 98, 104 [153 P. 933]; *Fallbrook Irr. Dist.* v. *Bradley*, *supra* [164 U.S. 112 (17 S.Ct. 56, 41 L.Ed. 369)].)"

From the foregoing it is apparent that the inclusion of all of the lands within the agency and the imposition of an ad valorem tax on all of these lands on the ground that they would benefit by the operation thereof was a matter properly determined by the Legislature. It is noted that

among the purposes for which the agency was created are "controlling and conserving storm, floor and other surface waters for any beneficial use and for the protection of life and property in said district." (Stats. 1945, P. 2780.) Those indirect benefits referred to in *Los Angeles Flood Control District* v. *Hamilton, supra,* and conferred upon all of the lands within the agency, appear to be well within the legitimate scope of the act.

In their fifth affirmative defense the defendants raise issues which have been discussed and disposed of in *Ivanhoe Irr. Dist.* v. *All Parties, ante,* [1]p. —— [—— P.2d ——], and in *Madera Irr. Dist.,* v. *All Persons, ante,* [2]p. —— [——P.2d ——]. In accordance therewith it is concluded that the excess land provisions of the contracts involved here, which are substantially the same as those in the Ivanhoe and Madera contracts, are inapplicable and if not declared to be so would deprive the landowners of the member units of their property rights without due process of law and constitute a denial of the equal protection of the laws; that the United States is acting in its proprietary capacity as a purveyor of the domestic waters of the state to the agency and its member units; that it is bound to observe and comply with the laws of the state with reference to the rights of the water users being served, and that the contract is invalid insofar as it, by implication or otherwise, provides that the United States can arbitrarily cause to be discontinued the distribution of water to those for whose benefit the right to the water was acquired in the first instance.

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[1]Advance Report Citation: *Ante,* p. 603 [Herein p. 1].
[2]Advance Report Citation: *Ante,* p. 685 [Herein p. 157].

Numerous other grounds for the invalidity of the contracts are asserted. It is stated in the defendants' sixth affirmative defense that the contracts are lacking in consideration and are impossible of performance, in their seventh and eighth [715] affirmative defenses that provisions in the contracts authorized by the Water Code (§23202) and the Reclamation Act of 1939 (§§ 9[c] [2], 9[e], 53 Stats. 1187) delegate legislative power to the Secretary of the Interior in violation of the Fourteenth Amendment of the federal Constitution and provisions in the state Constitution (art. IV, § 1), and in the ninth affirmative defense that the provisions entitling the United States to all waste, seepage and return flow are invalid. These contentions are insufficiently supported when considered with what has been said herein and in the Ivanhoe and Madera cases as to the matters concerning which the parties may properly contract.

Questions have been raised as to the sufficiency of certain proceedings leading to the execution of the contracts and the notice of elections for their confirmation. Such questions need not be determined in this case for the reason that upon a submission of any further proposed contracts the alleged defects need not recur.

The attorney general appearing as amicus curiae in behalf of the State of California in support of the judgment, questions the right of the appellants to prosecute this appeal. It appears that the notice of appeal was filed some 35 days after entry of the judgment. Section 11.10 of the Santa Barbara County Water Agency Act provides in part that any "party may appeal at any time within 30 days after the entry of the judgment." It is contended that the

failure to appeal within the time specified requires that the appeal be dismissed by the court of its own motion, even if no objection has been made by any party to the proceeding. (*In re Horowitz*, 33 Cal.2d 534, 537 [203 P. 2d 513]; *Estate of Hanley*, 23 Cal.2d 120, 123 [142 P.2d 423, 149 A.L.R. 1250].)

The appellants assert that the 30-day period within which an appeal "may" be taken in pursuance of section 11.10 of the act is permissive and not mandatory. Section 2(i) of the act provides that "may" is permissive and "shall" is mandatory. Section 11.10 of the act, after setting forth the special provision for the time in which to appeal, states further that the "rules of pleading and practice not inconsistent with the provisions of this section, are applicable to all actions or proceedings provided for by this section." Rule 2(a) of the Rules on Appeal provides that "Except as otherwise specifically provided by law, notice of appeal shall be filed within 60 days from the date of entry of the judgment. . . ."

The appellants contend that as the special provision is permissive only, it is not inconsistent with the Rules on Appeal [716] and that the latter should control. In support thereof they refer to the following declaration in section 11.10 of the act: "In a contest provided for by this Section, the court shall disregard any irregularity or omission which does not affect the substantial rights of the parties." They claim that no substantial right of the respondent has been adversely affected. Furthermore, it is argued, that when the law is doubtful as to the right of appeal, the cause will be heard on its merits. (*People* v. *Bryant*, 207 Cal. 450, 452 [278 P. 1025]; *San Francisco* v.

Certain Real Estate, 42 Cal. 513.) In *People* v. *Bank of San Luis Obispo,* 152 Cal. 261, it is said at page 264 [92 P. 481]: "The right of appeal is remedial and in doubtful cases the doubt should be resolved in favor of the right whenever the substantial interests of a party are affected by a judgment."

The intent of the so-called "permissive" appeal provisions of section 11.10 at best is doubtful and in accordance with the foregoing no good reason appears why the appeal should not be entertained.

It is concluded that the judgment insofar as it declares the validity of the Santa Barbara Water Agency Act and the existence of the agency and its member units must be and hereby is affirmed. Insofar as the judgment confirms and declares valid the master contract and the five member unit contracts it is reversed, the appellants to recover costs on appeal.

Schauer, J., Spence, J., and McComb, J., concurred.

GIBSON, C. J., Concurring and Dissenting.—I concur in the views expressed in the portion of the majority opinion which relates to the validity of the Santa Barbara Water Agency Act and the existence of the agency and its member units. For the reasons stated in my dissenting opinion in *Ivanhoe Irr. Dist.* v. *All Parties, ante,* [1]p. —— [—— P.2d ——], I disagree with the majority opinion insofar as it reverses the judgment of the trial court.

Traynor, J., concurred.

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[1]Advance Report Citation: *Ante,* p. 653 [Herein p. 64].

CARTER, J., Dissenting.—This is a companion case to *Ivanhoe Irr. Dist.* v. *All Parties, ante,* [1]p. —— [—— P.2d ——], and for the reasons stated in my dissenting opinion in that case, I would affirm the judgment of the trial court here. [717]

[1]Advance Report Citation: *Ante,* p. 603 [Herein p. 1].

Appendix D-2

In the Superior Court of The State of California
In and for the County of Santa Barbara

No. 37417

The Santa Barbara County Water Agency, a public district and body politic and corporate,

Plaintiff,

vs.

The State of California, All Property Owners in Said Agency, All Residents in Said Agency, All Registered Voters in Said Agency, and All Persons Interested,

Defendants.

JUDGMENT*

In this cause the default of all the defendants, except the defendants Maurice A. Balaam, Ted R. Holden, William C. Sudden, W. G. Moore, R. E. Sudden, Charles E. Sudden and L. H. Crandall (hereinafter referred to as the "Answering Defendants") was duly entered in order of the Court May 1, 1950. Thereafter this cause came on regularly for hearing before the Court on November 14,

*Clerk's Transcript pp. 750-755.

1951, sitting without a jury, the Honorable Charles F. Blackstock, Judge of the Superior Court, presiding, Plaintiff appearing by Vern B. Thomas, Esquire, District Attorney of said County and Lawrence M. Parma, Deputy District Attorney of said County, and the Answering Defendants appearing by Sherman Anderson, Esquire, and W. P. Butcher, Esquire. And evidence having been introduced and the cause submitted to the Court for decision on Plaintiff's Complaint and that portion of the Answer of the Answering Defendants filed August 18, 1950, from pages 1 to 12 inclusive (but exclusive of the affirmative defenses alleged in pages 13 to 26 inclusive) as said Answer is amended with respect to the Answer to the Second, Third, Fourth and Fifth Causes of Action in Plaintiff's Complaint by pages 1 and 2 of an "Amendment" to said Answer verified December 4, 1950 and filed on or about January 2, 1951 (but exclusive of the First and Ninth Affirmative Defenses contained at pages 2 to 5 inclusive of said "Amendment") and as said Answer was further amended with respect to said Answer to said Second, Third, Fourth and Fifth causes of action in said Complaint by an oral stipulation entered into at the time of trial whereby said portions of said Answer were amended to include the allegation by interlineation on the face of said Answer that the elections referred to in said causes of action were not carried on or conducted in the manner required by sections 31157, 31407, and 31391 of the Water Code of the State of California, and the Court having duly considered the cause and being fully advised in the premises, and the Court having heretofore made and caused to be filed herein its written Findings of Fact and Conclusions of Law;

Now, Therefore, by Reason of The Law and The Findings of Fact Aforesaid It Is Hereby Ordered, Adjudged and Decreed as Follows:

I.

That all of the Defendants named in the Complaint and Summons herein have each and all been duly served with process and summoned to appear and answer the Complaint of the Plaintiff herein by the publication of said summons pursuant to the order of the Court and that such publication was in the form and manner and was published for the time and in the manner prescribed by law, and that the legal time for answer has since expired and no Defendants having answered herein except said Answering Defendants, the default of all parties defendant except said Answering Defendants has been duly entered according to law.

II.

That this action is lawfully presented as an action in rem and this Court has jurisdiction of the subject matter and of all parties hereto.

III.

That the Plaintiff, the Santa Barbara County Water Agency, now is and continuously at all times since September 15, 1945, has been a legal and valid district created, organized and existing under and by virtue of the Santa Barbara County Water Agency Act (1945 California Statutes, Chapter 1501, 1949 California Statutes, Chapter 12) and is lawfully and constitutionally vested with all the powers, authorities and prerogatives conferred by said Act.

IV.

That the aforesaid Santa Barbara County Water Agency Act as enacted by 1945 California Statutes, Chapter 1501, and as amended by 1949 California Statutes, Chapter 12, and each and every part thereof is valid and legal and does not contravene nor violate any provision of the Constitution of the United States of America or the Constitution of California.

V.

That on and prior to September 12, 1949 and continuously ever since date the City of Santa Barbara has been a municipal corporation, and the Montecito County Water District, the Goleta County Water District, the Summerland County Water District and the Carpinteria County Water District each have been a county water district, said city and said county water districts each being duly, validly and legally organized, established and existing under and by virtue of the laws of the State of California.

VI.

That a certain contract entitled "Contract For The Furnishing of Water to Member Units of Santa Barbara County Water Agency," executed by the Plaintiff and the United States of America, acting by and through Richard L. Boke, Regional Director, Region 2, Bureau of Reclamation, United States Department of the Interior, dated September 12, 1949, a true copy of which is attached to the Complaint here as Exhibit "A" (sometimes called the "Master Contract") was duly executed on September 12, 1949 by the respective parties thereto, and that said Master Contract is, and that each and every of the terms and

provisions thereof are, lawful and valid and within the lawful power of the Santa Barbara County Water Agency and the United States of America to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract have been taken, had and performed in the manner required by law and that said contract is valid and legally binding upon, against and in favor of said Santa Barbara County Water Agency and the United States of America, and is the lawful, legal and binding act of each of the parties thereto.

VII.

That the certain contract entitled "Contract For Furnishing Water to Carpinteria County Water District", a true copy of which is attached to the Complaint herein as Exhibit "E", dated September 12, 1949, and executed by and between said Agency and the Carpinteria County Water District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Carpinteria County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last mentioned is valid and legally binding upon, against and in favor of said Agency and said Carpinteria County Water District, and is the lawful, legal and binding act of each of the parties thereto.

VIII.

That the certain contract entitled "Contract for Furnishing Water to Goleta County Water District," dated

September 12, 1949, a true copy of which is attached to the Complaint as Exhibit "F", and executed by and between said Agency and the Goleta County Water District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Goleta County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last mentioned is valid and legally binding upon, against and in favor of said Agency and said Goleta County Water District, and is the lawful, legal and binding act of each of the parties thereto.

IX.

That the certain contract entitled "Contract for Furnishing Water to Montecito County Water District", a true copy of which is attached to the Complaint as Exhibit "G", dated September 12, 1949, and executed by and between said Agency and the Montecito County Water District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Montecito County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last mentioned is valid and legally binding upon, against and in favor of said Agency and said Montecito County Water District, and is the lawful, legal and binding act of each of the parties thereto.

X.

That the certain contract entitled "Contract for Furnishing Water to Summerland County Water District", a true copy of which is attached to the Complaint as Exhibit "H", dated December 8, 1949, and executed by and between said Agency and the Summerland County Water District is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said Summerland County Water District to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last mentioned is valid and legally binding upon, against and in favor of said Agency and said Summerland County Water District, and is the lawful, legal and binding act of each of the parties thereto.

XI.

That the certain contract entitled "Contract for Furnishing Water to City of Santa Barbara", a true copy of which is attached to the Complaint as Exhibit "D", dated September 12, 1949, and executed by and between said Agency and the City of Santa Barbara is, and that each and every of the terms and provisions thereof are, lawful and valid and within the lawful power of said Agency and said City of Santa Barbara to make, enter into and carry out, and that all proceedings leading up to and including the execution of said contract last mentioned have been taken, had and performed in the manner required by law and that said contract last mentioned is valid and legally

binding upon, against and in favor of said Agency and said City of Santa Barbara, and is the lawful, legal and binding act of each of the parties thereto.

XII.

That the organization and existence of said Agency, City of Santa Barbara and said County Water Districts and each of them and the validity, legality and constitutionality of the powers, authority and prerogatives vested in them by the laws of the State of California is hereby confirmed and approved.

XIII.

That each of said contracts aforesaid, and each and every term and provision thereof, is and are in all respects valid and authorized by law and said contracts, and each and every term and provision thereof is and are in all respects a valid, legal and subsisting contract, binding upon, against and in favor of the respective parties thereto, and said contracts and each and every term and provision thereof, and each and every act of the respective parties thereto, leading up to and including the executions and deliveries thereof, is hereby confirmed, approved and adjudged to be valid, legal and constitutional.

XIV.

That said Answering Defendants and each of them has waived and is estopped from asserting the illegality or unconstitutionality of said Plaintiff and of said Santa Barbara County Water Agency Act and said Santa Barbara County Water Agency Act as amended.

Done in open Court this 20th day of October, 1952.

s/ Chas. F. Blackstock
Judge of the Superior Court

Entered October 22nd, 1952, in Judgment Book A-21, Page 333.

(Endorsed) Filed Oct. 22, 1952.
J. E. LEWIS, County Clerk
By s/ Pearl A. Barr, Deputy Clerk

Appendix E

RECLAMATION ACT OF 1902
(32 Stat. 388)

Sec. 5 (32 Stat. 389, 43 U.S.C. sec. 431):

. . . No right to the use of water for land in private ownership shall be sold for a tract exceeding 160 acres to any one landowner, and no such sale shall be made to any landowner unless he be an actual bona fide resident on such land, or occupant thereof residing in the neighborhood of said land, and no such right shall permanently attach until all payments therefor are made.

Sec. 6 (32 Stat. 689, 43 U.S.C. secs. 491, 498):

That the Secretary of the Interior is hereby authorized and directed to use the reclamation fund for the operation and maintenance of all reservoirs and irrigation works constructed under the provisions of this act: *Provided*, That when the payments required by this act are made for the major portion of the lands irrigated from the waters of any of the works herein provided for, then the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby, to be maintained at their expense under such form of organization and under such rules and regulations as may be acceptable to the Secretary of the Interior: *Provided*, That the title to and the management and operation of the reservoirs and the works necessary for their protection and operation

shall remain in the Government until otherwise provided by Congress.

Sec. 8 (32 Stat. 390, 43 U.S.C. secs. 372, 383):

That nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: *Provided*, That the right to the use of water acquired under the provisions of this act shall be appurtenant to the land irrigated and beneficial use shall be the basis, the measure, and the limit of the right.

Appendix F

OMNIBUS ADJUSTMENT ACT OF 1926
(44 Stat. 636).

Sec. 46 (44 Stat. 649, 43 U.S.C. sec. 423e):

No water shall be delivered upon the completion of any new project or new division of a project until a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or irrigation districts organized under State law providing for payment by the district or districts of the cost of constructing, operating, and maintaining the works during the time they are in control of the United States, such cost of constructing to be repaid within such terms of years as the Secretary may find to be necessary, in any event not more than forty years from the date of public notice hereinafter referred to, and the execution of said contract or contracts shall have been confirmed by a decree of a court of competent jurisdiction. Prior to or in connection with the settlement and development of each of these projects, the Secretary of the Interior is authorized in his discretion to enter into agreement with the proper authorities of the State or States wherein said projects or divisions are located whereby such State or States shall cooperate with the United States in promoting the settlement of the projects or divisions after completion and in the securing and selecting of settlers. Such contract or contracts with irrigation districts hereinbefore referred to shall further

provide that all irrigable land held in private ownership by any one owner in excess of one hundred and sixty irrigable acres shall be appraised in a manner to be prescribed by the Secretary of the Interior and the sale prices thereof fixed by the Secretary on the basis of its actual bona fide value at the date of appraisal without reference to the proposed construction of the irrigation works; and that no such excess lands so held shall receive water from any project or division if the owners thereof shall refuse to execute valid recordable contracts for the sale of such lands under terms and conditions satisfactory to the Secretary of the Interior and at prices not to exceed those fixed by the Secretary of the Interior; and that until one-half the construction charges against said lands shall have been fully paid no sale of any such lands shall carry the right to receive water unless and until the purchase price involved in such sale is approved by the Secretary of the Interior and that upon proof of fraudulent representation as to the true consideration involved in such sales the Secretary of the Interior is authorized to cancel the water right attaching to the land involved in such fraudulent sales: *Provided further*, That the operation and maintenance charges on account of lands in said projects and divisions shall be paid annually in advance not later than March 1. It shall be the duty of the Secretary of the Interior to give public notice when water is actually available, and the operation and maintenance charges payable to the United States for the first year after such public notice shall be transferred to and paid as a part of the construction payment.

Appendix G

ACT OF AUGUST 26, 1937
(50 Stat. 844).

Sec. 2 (50 Stat. 850):

That the $12,000,000 recommended for expenditure for a part of the Central Valley project, California, in accordance with the plans set forth in Rivers and Harbors Committee Document Numbered 35, Seventy-third Congress, and adopted and authorized by the provisions of section 1 of the Act of August 30, 1935 (49 Stat. 1028, at 1038), entitled "An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," shall, when appropriated, be available for expenditure in accordance with the said plans by the Secretary of the Interior instead of the Secretary of War: *Provided,* That the transfer of authority from the Secretary of War to the Secretary of the Interior shall not render the expenditure of this fund reimbursable under the reclamation law: *Provided further,* That the entire Central Valley project, California, heretofore authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115) and the First Deficiency Appropriation Act, fiscal year 1936 (49 Stat. 1622), is hereby reauthorized and declared to be for the purposes of improving navigation, regulating the flow of the San Joaquin River and the Sacramento River, controlling floods, providing for storage and for the delivery of the stored waters thereof, for the reclamation of arid and

semi-arid lands and lands of Indian reservations, and other beneficial uses, and for the generation and sale of electric energy as a means of financially aiding and assisting such undertakings and in order to permit the full utilization of the works constructed to accomplish the aforesaid purposes: *Provided further,* That, except as herein otherwise specifically provided, the provisions of the reclamation law, as amended, shall govern the repayment of expenditures and the construction, operation, and maintenance of the dams, canals, power plants, pumping plants, transmission lines, and incidental works deemed necessary to said entire project, and the Secretary of the Interior may enter into repayment contracts, and other necessary contracts, with State agencies, authorities, associations, persons, and corporations, either public or private, including all agencies with which contracts are authorized under the reclamation law, and may acquire by proceedings in eminent domain, or otherwise, all lands, rights-of-way, water rights, and other property necessary for said purposes: *And provided further,* That the said dam and reservoirs shall be used, first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses; and, third, for power.

Appendix H

RECLAMATION PROJECT ACT OF 1939
(53 Stat. 1187).

Sec. 9(c) (53 Stat. 1195, 43 U.S.C. sec. 485h(c):

The Secretary is authorized to enter into contracts to furnish water for municipal water supply or miscellaneous purposes: *Provided*, That any such contract either (1) shall require repayment to the United States, over a period of not to exceed forty years from the year in which water is first delivered for the use of the contracting party, with interest not exceeding the rate of 3½ percentum per annum if the Secretary determines an interest charge to be proper, of an appropriate share as determined by the Secretary of that part of the construction costs allocated by him to municipal water supply or other miscellaneous purposes; or (2) shall be for such periods, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, and shall require the payment of said rates each year in advance of delivery of water for said year. Any sale of electric power or lease of power privileges, made by the Secretary in connection with the operation of any project or division of a project, shall be for such periods, not to exceed forty years, and at such rates as in his judgment will produce power revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost, interest on an appropriate

share of the construction investment at not less than 3 percentum per annum, and such other fixed charges as the Secretary deems proper: *Provided further*, That in said sales or leases preference shall be given to municipalities and other public corporations or agencies; and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 and any amendments thereof. Nothing in this subsection shall be applicable to provisions in existing contracts, made pursuant to law, for the use of power and miscellaneous revenues of a project for the benefit of users of water from such project. The provisions of this subsection respecting the terms of sales of electric power and leases of power privileges shall be in addition and alternative to any authority in existing laws relating to particular projects. No contract relating to municipal water supply or miscellaneous purposes or to electric power or power privileges shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes.

Sec. 9(d) (53 Stat. 1195, 43 U.S.C. sec. 485h(d):

No water may be delivered for irrigation of lands in connection with any new project, new division of a project, or supplemental works on a project until an organization, satisfactory in form and powers to the Secretary, has entered into a repayment contract with the United States, in a form satisfactory to the Secretary, providing among other things—

(1) That the Secretary may fix a development period for each irrigation block, if any, of not to exceed ten years

from and including the first calendar year in which water is delivered for the lands in said block; and that during the development period water shall be delivered to the lands in the irrigation block involved at a charge per annum per acre-foot, or other charge, to be fixed by the Secretary each year and to be paid in advance of delivery of water: *Provided,* That where the lands included in an irrigation block are for the most part lands owned by the United States, the Secretary, prior to execution of a repayment contract, may fix a development period, but in such case execution of such a contract shall be a condition precedent to delivery of water after the close of the development period. After the close of the development period, any such charges collected and which the Secretary determines to be in excess of the cost of the operation and maintenance during the development period shall be credited to the construction cost of the project in the manner determined by the Secretary.

(2) That the part of the construction costs allocated by the Secretary to irrigation shall be included in a general repayment obligation of the organization; and that the organization may vary its distribution of construction charges in a manner that takes into account the productivity of the various classes of lands and the benefits accruing to the lands by reason of the construction: *Provided,* That no distribution of construction charges over the lands included in the organization shall in any manner be deemed to relieve the organization or any party or any land therein of the organization's general obligation to the United States.

(3) That the general repayment obligation of the organization shall be spread in annual installments, of the

number and amounts fixed by the Secretary, over a period not exceeding forty years, exclusive of any development period fixed under subsection (d) (1) of this section, for any project contract unit, or for any irrigation block, if the project contract unit be divided into two or more irrigation blocks.

(4) That the first annual installment for any project contract unit, or for any irrigation block, as the case may be, shall accrue, on the date fixed by the Secretary, in the year after the last year of the development period or, if there be no development period, in the calendar year after the Secretary announces that the construction contemplated in the repayment contract is substantially completed or is advanced to a point where delivery of water can be made to substantially all of the lands in said unit or block to be irrigated; and if there be no development period fixed, that prior to and including the year in which the Secretary makes said announcement water shall be delivered only on the toll charge basis hereinbefore provided for development period.

(5) Either (A) that each year the installment of the organization's repayment obligation scheduled for such year shall be the construction charges due and payable by the organization for such year; or (B) that each year the installment for such year of the organization's repayment obligation shall be increased or decreased on the basis of the normal and percentages plan provided in section 4 of this Act for modification of existing obligations to pay construction charges, and the amount of the annual installment of the organization's obligation, as thus increased or decreased, shall be the construction charges due and pay-

able for such year. Under (B) of this subsection the provisions of section 4 of this Act shall be applicable, as near as may be, to the repayment contract made in connection with the new project, new division of a project or supplemental works on a project; and the organization shall make payments on the basis therein provided until its general repayment obligation has become due and payable to the United States in full.

Sec. 9(e) (53 Stat. 1196, 43 U.S.C. sec. 485h(e):

In lieu of entering into a repayment contract pursuant to the provisions of subsection (d) of this section to cover that part of the cost of the construction of works connected with water supply and allocated to irrigation, the Secretary, in his discretion, may enter into either short- or long-term contracts to furnish water for irrigation purposes. Each such contract shall be for such period, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, due consideration being given to that part of the cost of construction of works connected with water supply and allocated to irrigation; and shall require payment of said rates each year in advance of delivery of water for said year. In the event such contracts are made for furnishing water for irrigation purposes, the costs of any irrigation water distribution works constructed by the United States in connection with the new project, new division of a project, or supplemental works on a project, shall be covered by a repayment contract entered into pursuant to said subsection (d).

Appendix I

ACT OF JULY 2, 1956
(70 Stat. 483, 43 U. S. C. A. sec. 485h-1 (1956 Supp.)).

Sec. 1:

In administering section 9, subsections (d) and (e) of the Reclamation Project Act of 1939 (53 Stat. 1187, 1195), the Secretary of the Interior shall—

(1) include in any long-term contract hereafter entered into under said subsection (e) provision, if the other contracting party so requests, for renewal thereof under stated terms and conditions mutually agreeable to the parties. Such terms and conditions shall provide for an increase or decrease in the charges set forth in the contract to reflect, among other things, increases or decreases in construction, operation, and maintenance costs and improvement or deterioration in the party's repayment capacity. Any right of renewal shall be exercised within such reasonable time prior to the expiration of the contract as the parties shall have agreed upon and set forth therein;

(2) include in any long-term contract hereafter entered into under said subsection (e) with a contracting organization provision, if the organization so requests, for conversion of said contract, under stated terms and conditions mutually agreeable to the parties, to a contract under subsection (d) at such time as, account being taken of the amount credited to return by the organization as hereinafter provided, the remaining amount of construction cost which is properly assignable for ultimate return by it can

probably be repaid to the United States within the term of a contract under said subsection (d);

(3) credit each year to every party which has entered into or which shall enter into a long-term contract pursuant to said subsection (e) so much of the amount paid by said party on or before the due date as is in excess of the share of the operation and maintenance costs of the project which the Secretary finds is properly chargeable to that party. Credit for payments heretofore made under any such contract shall be established by the Secretary as soon after the enactment of this Act as it is feasible for him to do so. After the sum of such credits is equal to the amount which would have been for repayment by the party if a repayment contract under subsection (d) had been entered into, which amount shall be established by the Secretary upon completion of the project concerned or as far in advance thereof as is feasible, no construction component shall be included in any charges made for the furnishing of water to the contracting party and any charges theretofore fixed by contract or otherwise shall be reduced accordingly;

(4) provide that the other party to any contract entered into pursuant to said subsection (d) or to any long-term contract entered into pursuant to said subsection (e) shall, during the term of the contract and of any renewal thereof and subject to fulfillment of all obligations thereunder, have a first right (to which right the rights of the holders of any other type of irrigation water contract shall be subordinate) to a stated share or quantity of the project's available water supply for beneficial use on the irrigable lands within the boundaries of, or owned by, the

party and a permanent right to such share or quantity upon completion of payment of the amount assigned for ultimate return by the party subject to payment of an appropriate share of such costs, if any, as may thereafter be incurred by the United States in its operation and maintenance of the project works; and

(5) provide for payment of rates under any contract entered into pursuant to said subsection (e) in advance of delivery of water on an annual or semiannual basis as specified in the contract.

(6) include a reasonable construction component in the rates set out in any long-term contract hereafter entered into under said subsection (e) prior to amortization of that part of the cost of constructing the project which is assigned to be repaid by the contracting party.

Sec. 2:

The Secretary is hereby authorized to negotiate amendments to existing contracts entered into pursuant to section 9, subsection (e), of the Reclamation Project Act of 1939 to conform said contracts to the provisions of this Act.

Sec. 3:

As used in this Act, the term "long-term contract" shall mean any contract the term of which is more than ten years.

Sec. 4:

Nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws

of any State relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary in carrying out the provisions of this Act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: *Provided,* That the right to the use of water acquired under the provisions of this Act shall be appurtenant to the land irrigated and beneficial use shall be the basis, the measure, and the limit of the right.

Sec. 5:

This Act shall be a supplement to the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto).

Appendix J

CALIFORNIA IRRIGATION DISTRICT FEDERAL COOPERATION LAW (California Water Code, Division 11, Part 6, Chapter 2).

Sec. 23175:

This chapter shall be known and may be cited as the Irrigation District Federal Cooperation Law.

Sec. 23176:

[Application of provisions.] The provisions of this chapter apply only to proceedings taken under it and do not apply to district operations unrelated to cooperation with the United States.

[Other provisions of division unaffected.] Except as required expressly or by necessary implication by this chapter all other provisions of this division are unaffected by this chapter.

Sec. 23177:

The definitions in Chapter 2 of Part 1 of this division are applicable to this chapter.

Sec. 23178:

The provisions of Article 4 of Chapter 2 of Part 5 of this division do not apply in case of any contract between a district and the United States.

Sec. 23179:

The board shall perform all acts necessary to carry out the enlarged powers enumerated in this chapter.

Sec. 23195:

Districts may cooperate and contract with the United States under the Federal Reclamation Act of June 17, 1902, and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting cooperation.

Sec. 23196:

The cooperation and contract may be for any or all of the following purposes:

(a) Acquisition, extension, or operation of works for irrigation or drainage or development and distribution of electric power or any or all of these purposes.

(b) A water supply.

(c) Assumption as principal or guarantor of indebtedness to the United States on account of district land.

(d) Borrowing or procuring money from the United States to finance any of the operations of the district.

(e) Financing or refinancing obligations of the district, including outstanding warrants or other indebtedness.

(f) Purchasing or refunding bonds of the district.

(g) Accomplishing any of the purposes of the district.

Sec. 23197:

In a contract made pursuant to Section 23196 a district may include provision for either or both of the following:

(a) Delivery and distribution of water for the land in the district under the relevant acts of Congress and the rules and regulations established thereunder.

(b) Conveyance to the United States as partial consideration for the privileges obtained by the district under the contract of any property of the district.

Sec. 23200:

All water, the right to the use of which is acquired by a district under any contract with the United States, shall be distributed and apportioned by the district in accordance with the applicable acts of Congress, the rules and regulations of the Secretary of the Interior thereunder, and the provisions of the contract, and provision may be made in the contract for the refusal of water service to any or all land which may become delinquent in the payment of any assessment levied for the purpose of carrying out the contract.

Sec. 23225:

A district may submit any contract or proposed contract and bond issue to the superior court of the county in which is situated the office of the board to determine the validity thereof, the authority of the district to make the contract, and the authority for and validity of the issuance and deposit or transfer of the bonds. The validation proceedings shall be had as in the ordinary case of the judicial determination of the validity of district bonds and with like effect.

Appendix K

SANTA BARBARA COUNTY WATER AGENCY ACT

(Calif. Stats. 1945, ch. 1501, p. 2780, as amended by Calif. Stats. 1949, ch. 12, p. 24, 1 Deering's Calif. Water Code Ann., Act 7303 (1954)).

Sec. 6:

The agency shall have the power to cooperate and contract with the United States under the Federal Reclamation Act of June 17, 1902 and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting cooperation or contract for the purposes of construction of works, whether for irrigation, drainage, or flood control, or for the acquisition, purchase, extension, operation or maintenance of such works, or for a water supply for any purposes, or for the assumption as principal or guarantor of indebtedness to the United States, or for carrying out any of the purposes of the agency, and to carry out and perform the terms of any contract so made; and for said purposes the agency shall have in addition to the powers specifically set forth in this act, all powers, rights and privileges possessed by irrigation districts as set out in Chapter 2 of Part 6 of Division 11 of the Water Code, not inconsistent with the provisions of this act.

Sec. 6.3:

The agency shall have the power to cooperate; act in conjunction and contract with the United States, State of

California, municipalities, and public districts of any kind, in the purchase and sale of water, in the acquisition of water or a water supply, in the construction of any works for the controlling of flood or storm waters in the agency, or for the protection of property, watersheds, watercourses, highways and life, or for the purposes of conserving and transporting said waters for beneficial use, and for the use, operation, management and ownership of such works. The agency also may make and perform any agreement with the United States, the State, any county, municipality, district of any kind, public corporation, any person or any number of them for the joint acquisition, disposition, or operation of any property or works or water or water supply of a kind which might be acquired, disposed of, or operated by the agency.

Any county water district, water conservation district, municipality, flood control district, and any other district or political subdivision of the State empowered by law to appropriate water and deliver water to users shall have the power: (a) To cooperate, act in conjunction and enter into contracts with the agency for all the purposes for which the agency is empowered to cooperate, act in conjunction and contract with such districts, municipalities, and political subdivisions; (b) and to carry out the terms of such contracts.

Sec. 11.10:

The agency may bring at any time after the authorization of bonds or the levy of any special assessment or after the execution of any contract an action in the

Superior Court of the State of California in and for the County of Santa Barbara to determine the validity of the bonds or of the levy or of the contract. The action is in rem. Jurisdiction of all parties interested may be had by publication of summons for at least once a week for three weeks in a newspaper of general circulation published in the agency and designated by the court in which the proceedings are pending. Jurisdiction is complete 10 days after the completion of the publication of summons. Before the expiration of the 30 days after jurisdiction is acquired any person interested may appear and contest the validity of the bonds or assessment or the contract. If no proceedings have been brought by the agency pursuant to this section, any agency assessment [sic] or taxpayer may at any time within 30 days after the levy of any assessment or authorization of any bonds or execution of such contract bring an action in the said superior court to determine the validity of the assessment or bonds or contract. The agency shall be a defendant. If more than one action is pending at the same time concerning similar contests provided for in this section, they shall be consolidated and tried together. The rules of pleading and practice not inconsistent with the provisions of this section are applicable to all actions or proceedings provided for by this section. In a contest provided for by this section, the court shall disregard any irregularity or omission which does not affect the substantial rights of the parties. The judgment shall declare the bonds or levy or contract either valid or invalid. The costs of any hearing or contest may be allowed and apportioned between the parties or taxed

to the losing party in the discretion of the court. Any party may appeal at any time within 30 days after the entry of the judgment. No contest of any thing or matter herein provided shall be made other than in the time and manner in this section provided. In any such action all findings of fact or conclusions of the board upon all matters shall be conclusive unless the action was instituted within six months after the finding or conclusion was made.

Appendix L

CALIFORNIA WATER CODE SECTION 22250.

All water distributed by districts for irrigation purposes shall except when otherwise provided in this article be apportioned ratably to each landowner upon the basis of the ratio which the last assessment against his land for district purposes bears to the whole sum assessed in the district for district purposes.

Appendix M

CALIFORNIA WATER CODE, DIVISION 11, PART 5, CHAPTER 4.

Article 2. Validation of Bonds and Assessments

22670. A district may at any time after the authorization of any bonds or the levy of any assessment bring an action in the superior court of the office county to determine the validity of the bonds or of the levy.

22671. The action is in rem.

22672. Jurisdiction of all parties interested may be had by publication of summons for at least once a week for three weeks in a newspaper of general circulation published in the county where the action is pending and designated by the court in which the proceedings are pending.

22673. Jurisdiction is complete 10 days after the completion of publication of summons.

22674. Anyone interested may before the expiration of the 10 days appear and contest the validity of the bonds or assessments.

22675. If no proceedings have been brought by the district pursuant to this article, any district assessment payer may at any time within 30 days after the levy of any assessment or authorization of any bonds bring an action in the superior court of the office county to determine the validity of the assessment or bonds. The district shall be a defendant.

22676. If more than one action is pending at the same time concerning similar contests provided for in this article, they shall be consolidated and tried together.

22677. The rules of pleading and practice in the Code of Civil Procedure not inconsistent with the provisions of this article are applicable to all actions or proceedings provided for by this article.

22678. In a contest provided for by this article the court shall disregard any irregularity or omission which does not affect the substantial rights of the parties.

22679. The action shall be speedily tried.

22680. The judgment shall declare the bonds or levy either valid or invalid.

22681. When a district has exchanged bonds or has agreed to exchange bonds for any interest in property the court in any proceeding brought by a district pursuant to this article shall by its decree determine both:

(a) The validity of all bonds issued or to be issued under any contract or contracts for the exchange of bonds for property interests.

(b) Whether or not the bonds when delivered to the person entitled to them under the terms of the contract will or do constitute valid obligations of the district as against all persons.

22682. The motion for a new trial of any action or proceeding provided by this article shall be heard and determined within 10 days from the filing of the notice of intention.

22683. The costs of any hearing or contest provided for in this article may be allowed and apportioned between the parties or taxed to the losing party in the discretion of the court.

22684. Any party may appeal at any time within 30 days after the rendition of the judgment. The appeal shall be heard and determined within three months from the taking of the appeal.

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1956

122, ~~123~~, 124, 125

Nos. ~~993, 994, 995, 996~~

THE IVANHOE IRRIGATION DISTRICT, vs. *Plaintiff and Appellant,* ALL PARTIES AND PERSONS, etc., *Defendants,* THE STATE OF CALIFORNIA, *Defendant and Appellant,* COURTNEY McCRACKEN, *Defendant and Appellee.*	No. 993
THE MADERA IRRIGATION DISTRICT, vs. *Plaintiff and Appellant,* ALL PERSONS, etc., *Defendants,* THE STATE OF CALIFORNIA, *Defendant and Appellant,* CARL F. STEINER, et al., *Defendants and Appellees.*	No. 994
PHILLIP and JANE E. ALBONICO, vs. *Plaintiffs and Appellees,* THE MADERA IRRIGATION DISTRICT, *Defendant and Appellant.*	No. 995
THE SANTA BARBARA COUNTY WATER AGENCY, vs. *Plaintiff and Appellant,* ALL PARTIES AND PERSONS, etc., *Defendants,* MAURICE A. BALAAM, et al., *Defendants and Appellees.*	No. 996

BRIEF OPPOSING MOTION TO DISMISS APPEAL.

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Subject Index

	Page
I. The judgments rest solely on federal bases	2
A. The validity of a statute of the United States has been drawn into question and the decisions are against its validity	2
1. How the water limitation was held to deny due process	3
2. How the water limitation was held to violate equal protection	5
3. The references to state laws merely explain the mode of water service in absence of the limitation	6
4. The failure to mention relevant state laws demonstrates reliance on federal grounds exclusively	7
5. The state law itself refers to federal law and its interpretation raises federal rather than state questions	8
B. The opinions expressly negative reliance on possible non-federal grounds of decision	9
C. The holdings of invalidity of the provisions concerning water delivery and payment and title to facilities are based exclusively on the interpretation of federal law	10
II. The federal questions are substantial	13
III. Conclusion	16

Table of Authorities Cited

Cases

	Pages
Carmichael v. Southern Coal Co., 301 U.S. 495 (1937)	6 n. 3
County of L.A. v. Southern Cal. Tel. Co., 32 Cal. 2d 378, 196 P. 2d 773 (1948)	5
Dyer v. Sims, 341 U.S. 22 (1951)	2
Flournoy v. Wiener, 321 U.S. 253 (1944)	8
Lynch v. New York, 293 U.S. 52 (1934)	2
Manford v. Singh, 40 Cal. App. 700, 181 Pac. 844 (1919)	5 n. 2
Merchants Nat. Bank v. Escondido Irr. Dist., 144 Cal. 329, 77 Pac. 937 (1904)	4 n. 2
Minnesota v. National Tea, 309 U.S. 551 (1940)	2, 5 n. 2, 6
Nebraska v. Wyoming, 325 U.S. 589 (1945)	15
Smith v. Kansas City Title & Trust Co., 255 U.S. 180 (1921)	8
Standard Oil of California v. Johnson, 316 U.S. 481 (1942)	8
United States v. Carmack, 329 U.S. 230 (1946)	4
United States v. Gerlach Live Stock Co., 339 U.S. 725 (1950)	4, 14, 15
Wehrle v. Board of W. & P. Commrs., 211 Cal. 70, 293 Pac. 67 (1930)	8

United States Constitution

United States Constitution, "Supremacy Clause", Article VI, clause 2	6, 9

United States Statutes

Act of July 2, 1956, 70 Stat. 483 (1956), 43 U.S.C.A. Section 485h-1 (1956 Supp.)	14
Omnibus Adjustment Act of 1926, Section 46, 44 Stat. 649 (1926), 43 U.S.C. Section 423e (1952)	2, 3, 6

Pages

Reclamation Act of 1902, Section 8, 32 Stat. 390 (1902), 43 U.S.C. Sections 372, 383 (1952) 11, 12, 14, 15

Reclamation Project Act of 1939:
Section 9(c), 53 Stat. 1194 (1939), 43 U.S.C. Section 485h(c) (1952) ..... 12 n. 4
Section 9(e), 53 Stat. 1196 (1939), 43 U.S.C. Section 485h(e) (1952) ..... 12 n. 4, 14

Tucker Act, 28 U.S.C. Section 1491 (1952) 4

California Constitution

California Constitution:
Article I, Section 11 5
Article I, Section 13 ..... 4 n. 2
Article XI, Section 8 ..... 7, 8

California Water Code

California Water Code:
Section 22250 ..... 6, 7
Section 23195 ..... 6, 8
Section 23196(b) 12
Section 23197 ..... 6, 8
Section 23200 ..... 6, 7, 8
Section 30000 et seq. 7

Law Review Note

Note, Supreme Court Review of State Interpretations of Federal Law Incorporated by Reference, 66 Harv. L. Rev. 1498 (1953) 9

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BRIEF OPPOSING MOTION TO DISMISS APPEAL.

Pursuant to rule 16, paragraph 3, the appellants herein oppose the appellees' motion to dismiss. This opposition

is based on the grounds that these appeals present only federal questions and that each federal question is substantial.

I. THE JUDGMENTS REST SOLELY ON FEDERAL BASES.

Asserting that the decisions of the state court are based on an adequate non-federal ground, the appellees contend that therefore these decisions are not reviewable by this court (Mo. Dis. pp. 8-10). The familiar cases stating and illustrating the rule are cited but reference to the cited cases will show that the rule relied on has no application to the present situation. Here the only statutes whose validity has been drawn into question are federal statutes and hence there can be no adequate non-federal ground of decision. By way of illustration contrast with the instant cases, *Lynch v. New York*, 293 U.S. 52 (1934), and *Minnesota v. National Tea*, 309 U.S. 551 (1940), cited by appellees. Both of the cited cases involved the validity of *state* statutes which were questioned on both state and federal constitutional grounds. We submit that here whether the constitutional question is state or federal is immaterial in determining reviewability because the questioned statute is a federal one (cf. *Dyer v. Sims*, 341 U.S. 22, 28-30 (1951)).

A. The validity of a statute of the United States has been drawn into question and the decisions are against its validity.

The federal statute primarily attacked is the 160 acre water limitation in section 46 of the *Omnibus Adjustment Act of 1926* (App. p. 237).* The appellees argue that the

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*The references (App. p. ....) are to the Appendices to the Jurisdictional Statement.

decisions appealed from merely interpret state law to hold this statute inapplicable (Mo. Dis. p. 14n.).

Any doubt that the California court held section 46 unconstitutional is removed, however, by that court's description of its own holding. Thus in the *Madera* case relying on *Ivanhoe*, it holds the water limitation ineffective because the "large landowners" would be "denied thereby due process and equal protection of the laws" (App. p. 145). And similarly in the *Santa Barbara* case: ". . . the excess land provisions . . . are inapplicable and if not declared to be so would deprive landowners of the member units of property rights without due process of law and constitute a denial of equal protection of the laws" (App. p. 221). (See also the *Albonico* case, App. p. 183).

Examination of the *Ivanhoe* opinion shows that in reaching its conclusion that the limitation is inapplicable because unconstitutional the court relies only on federal grounds. We shall first discuss due process and thereafter equal protection.

1. How the water limitation was held to deny due process.

The first step is to postulate a "trust" involving rights of the beneficiaries in unappropriated water. A part of this postulate is that the limitation violates the rights of the beneficiaries (App. pp. 29-33). Another part is that the United States is a trustee because it "steps into the shoes of the state to administer the trust . . ." and that the "state may not therefore lawfully dispossess itself . . . of the trust under which the title is held" (App. p. 31). Later this is amplified by holding: ". . . the federal law [§ 46, *supra*] could be applicable only on the theory

that the United States is the owner absolute of the domestic waters of the state with the right to the use thereof freed of any trust relationship . . . such a theory is untenable . . ." (App. p. 51; see also App. pp. 43, 45).[1]

The trust is the means whereby the California court would deprive the United States of the capacity to acquire the rights that court believes it must have to accomplish a federal purpose (cf. App. p. 45). Thus the trust is used to create a state restriction on the federal power of eminent domain. Such a restriction conflicts not only with this court's construction of that federal power (*United States v. Carmack*, 329 U.S. 230, 236-239 (1946)), but also with the holding of this court in *United States v. Gerlach Live Stock Co.*, 339 U.S. 725, 739 (1950) that in the Central Valley Project the United States was properly exercising that power and that the *Tucker Act* remedies are available.

The next steps in the California court's reasoning are simple: since the limitation is inconsistent with the trust, and since the United States cannot extinguish the trust rights in accordance with due process through the exercise of the power of eminent domain, the limitation must fail (App. pp. 45, 47, 48). Whether the due process referred to is that in the state constitution[2] or in the United States

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[1]Our many points of disagreement with the merits of this postulate have been asserted in our Petitions for Rehearing included in the record herewith.

[2]The appellees rely on the state constitution (Mo. Dis. p. 14), but the only reference to the state constitutional provision in the opinions is in a quotation from *Merchants Nat. Bank v. Escondido Irr. Dist.*, 144 Cal. 329, 77 Pac. 937 (1904) (App. pp. 20-30). The due process clause in the California Constitution (Art. I, § 13) "is mani-

constitution is immaterial. The reason due process is violated, in the court's view, is not that it has a meaning in the state constitution over and beyond that in the federal constitution, but rather because the United States lacks the power to proceed in accordance with due process, i.e., by exercising its power of eminent domain.

2. How the water limitation was held to violate equal protection.

The California court also holds that the limitation denies "equal protection" (App. pp. 47, 48-49, 145, 221). The appellees argue that these holdings are actually holdings that the limitation violates California Constitution Art. I, § 11 (Mo. Dis. p. 14).

The vice of this argument is that no state constitutional provision of this sort is anywhere mentioned in the opinions. There is no "equal protection" clause *eo nomine* in the California Constitution. Thus when the California court refers to "equal protection" it must be talking about the federal constitution. The California court has said heretofore that California Constitution Art. I, § 11, is "similar" to the equal protection clause of the Fourteenth Amendment (*County of L.A. v. Southern Cal. Tel. Co.*, 32 Cal. 2d 378, 388, 389, 196 P. 2d 773, 780, 781 (1948).) The fact that in the instant decisions it referred only to its own prior decisions on the state constitution thus demonstrates only error in applying the equal protection clause,

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festly in scope and purpose identical with said provision [the Fourteenth Amendment] of the federal constitution" (*Manford v. Singh*, 40 Cal. App. 700, 701, 181 Pac. 844 (1919). Contrast the situation in New York as described by this court in *Minnesota v. National Tea*, 309 U.S. 551, 556-557 (1940).

not that a state ground was relied on.[3] In this case it is clear that the question is federal and federal only because the federal constitution alone has been described, and the element of ambiguity due to the mention of both state and federal constitutions (as in *Minnesota v. National Tea, supra*) is absent.

Indeed to hold otherwise would be to hold that in plain violation of the Supremacy Clause (Art. VI, cl. 2) the California court tested the validity of federal law by reference to a state constitution.

3. The references to state laws merely explain the mode of water service in absence of the limitation.

The only points at which the state statutes are even mentioned in the whole discussion of the limitation is in the references to California Water Code sections 22250 and 23200 (App. pp. 46-47, 51, 252, 257; cf. Calif. Water Code §§ 23195 and 23197, App. pp. 251-252). Section 23200 provides in part:

> "All water, the right to the use of which is acquired by a district under any contract with the United States shall be distributed and apportioned by the district in accordance with the applicable acts of Congress, the rules and regulations of the Secretary of the Interior thereunder, and the provisions of the contract. . . ."

Only because of its immediately preceding holding that section 46 of the *Omnibus Adjustment Act of 1926* is unconstitutional, can the state court come to the conclu-

[3] To illustrate the error contrast the treatment of numerical distinctions by the California court (App. p. 49) and this court in *Carmichael v. Southern Coal Co.*, 301 U.S. 495, 510-511 (1937).

sion that section 46 is not an applicable act of Congress referred to in Water Code section 23200 (App. p. 51).

The same holding of unconstitutionality, of course, also explains the description of the effect of California Water Code section 22250 (App. pp. 46-47). This section prescribes a general rule for irrigation districts not cooperating with the United States requiring them to distribute water in proportion to the assessed value of land. The opinion says this rule is applicable to "both of the contracting parties" (App. p. 46), i.e., the United States as well as the district, and further that "no pertinent exceptions appear" (App. p. 47). Of course, the reason the California court does not find that the 160 acre water limitation is a pertinent exception is that it is about to hold the limitation unconstitutional.

4. The failure to mention relevant state laws demonstrates reliance on federal grounds exclusively.

Another indication that the California court relied only on federal grounds appears from its failure to discuss the special situations under state law in the *Santa Barbara* case. The appellees urge the decisions depend on California Water Code section 22250. Nevertheless, they describe the section correctly as a rule relating only to irrigation districts (Mo. Dis. pp. 12, 13). Section 22250 does not apply to the Santa Barbara County Water Agency (Jurisdictional Statement pp. 21, 35 n. 12); or to its member units which are county water districts (App. pp. 230-232) organized under the *County Water District Law* (Calif. Water Code §§ 30000 *et seq.*); or to its member unit, the City of Santa Barbara (App. pp. 232-233) which is a chartered city under California Constitution Article

XI, § 8. As a chartered city Santa Barbara has a large degree of control over its water supply as a "municipal affair" not subject to the general laws of the state (Calif. Const. Art. XI, § 8 (par. 12); *Wehrle v. Board of W. & P. Commrs.*, 211 Cal. 70, 73, 293 Pac. 67, 68 (1930)).

If the California court had been merely interpreting state law all of the state laws relevant to each of these special situations would have necessarily been considered. Instead, these other laws are not even mentioned and the Santa Barbara contracts both master and member unit are invalidated merely on the authority of the irrigation district cases (App. pp. 211, 221, 224). This is a compelling indication that only federal grounds were relied on, i.e., the grounds of invalidity of the 160 acre water limitation above described.

5. The state law itself refers to federal law and its interpretation raises federal rather than state questions.

Inspection of California Water Code section 23200 and its companion sections 23195 and 23197 shows that we have here another instance in which state law refers to federal law. In these circumstances we submit that the interpretation of state law therefore involves federal questions as demonstrated in *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180, 201-202 (1921), *Standard Oil of California v. Johnson*, 316 U.S. 481 (1942) and *Flournoy v. Wiener*, 321 U.S. 253 (1944). These state statutes do not merely adopt a federal rule in an area where the federal rule would not otherwise be operative; they are the means whereby the state is enabling itself to take advantage of the substantial federal benefits available under the United States reclamation program by conforming with the federal con-

ditions. It is a meaningless verbalism to say that all the state court did was interpret the state law to see which federal laws applied and therefore raised only a state question (Mo. Dis. p. 14 n.). The reasons *why* the federal law is held inapplicable are the determinant factor in ascertaining reviewability because this state law is one blended with federal law to form one organism. The state has sought uniformity with the federal law. This uniformity can be achieved only if there is one final arbiter to ascertain the validity of the cooperative effort (Note, *Supreme Court Review of State Interpretations of Federal Law Incorporated by Reference*, 66 Harv. L. Rev. 1498, 1502 (1953)).

If review is not permissible here a unique situation will be created: the state courts will have become the final authority on the question of whether a federal law is operative within the state. We believe that this is just the sort of paradox sought to be avoided by the Supremacy Clause and which has been avoided by this court in its opinions above cited. We urge that the rule discernible from those cases should be applied again to permit review here.

B. The opinions expressly negative reliance on possible non-federal grounds of decision.

Although the California Supreme Court could have rested its judgment holding the contracts illegal on state law grounds, examination of its opinions shows that it did not do so.

In the *Ivanhoe* and *Madera* cases the California Supreme Court disapproved the holdings of the trial courts

that the contracts were invalid on a number of purely state law grounds. As examples, the trial courts held that the contracts prohibit changes of the district's boundaries as authorized by state law (*Ivanhoe:* Clerk's Transcript p. 306; *Madera:* App. p. 174); and that the contracts never received the approval of the district's voters required by state law because of asserted defects in the notices of election (*Ivanhoe:* Clerk's Transcript pp. 245-246, 283, 307-308; *Madera:* App. pp. 160-161). The Supreme Court of California, in the judgments being appealed from, either rejected such state law grounds outright, or expressly refused to base its decisions on them (App. pp. 62, 153-154). In the *Santa Barbara* case, attacks by the appellees based on state law were all repudiated by both the trial court and the California Supreme Court (App. pp. 207-209; 211-221; 222).

C. The holdings of invalidity of the provisions concerning water delivery and payment and title to facilities are based exclusively on the interpretation of federal law.

In holding the contracts illegal because they do not provide for district repayment of a specific construction obligation for the main project water delivery facilities, and because they provide for retention by the United States of title to all project property, the California Supreme Court relied upon what it described as "the relationship of debtor and creditor . . . established in the record" (App. p. 39) and "the debtor-creditor nature of the contract" (App. p. 52; see also p. 37). It is plain from what the California Court said that it had federal law, not state law, in mind as the origin of this "debtor-creditor" relationship:

> "We have heretofore declared the debtor-creditor nature of the contract in question. In arriving at that conclusion it was considered that *applicable federal law* requires that the contract specify a specific amount of money to be repaid by the district by installments, within 40 years; that this is an obligation for repayment of the cost of construction of storage and delivery works, and that the payment by the district be credited against this obligation" (App. p. 52, emphasis added).

Nowhere in its opinions did the California Supreme Court cite or refer in any way to state law as providing the incidents of the "debtor-creditor" relationship upon which that Court predicated its conclusions on the validity of these aspects of the contracts. This omission was not inadvertent; there is no state law on the subject.

The conclusion of invalidity was again reached by the California Court when it viewed the contracts' water delivery provisions as placing the Untied States in the position of a water purveyor furnishing water at a price Here, too, the ground of decision was federal law. The California Court quoted the language of section 8 of the *Reclamation Act of 1902* which states that the Secretary of the Interior shall proceed in conformity with state law relating to the control, appropriation, use or distribution of water used in irrigation (App. pp. 55-56, 236), and then said:

> "It may fairly be said that the foregoing remains in full force; that it controls the operations of the Department of the Interior so far as federal law is concerned, and that under the controlling state law, the furnishing of water to consumers by a utility must

> be subject to and be in conformity with certain rules and regulations established by or under the authority of the Constitution and the statutes of the state" (App. pp. 55-56).

From this excerpt, it is clear that the California Court depended on federal law, section 8 of the *Reclamation Act of 1902*, as authority for the conclusion that the contract had to conform to state public utility law in order to be valid. There is no intimation in any of the opinions in these cases that state law, of itself, makes execution of such a contract beyond the powers of the districts. Of course there could not be, since state law expressly authorizes districts to contract with the Uinted States for a water supply as well as for other specified purposes (Calif. Wat. Code § 23196(b), App. p. 251).

The final doubt raised by the California Court as to the legality of the contracts' water delivery provisions was also predicated on federal rather than state grounds. The Court stated:

> "If this contract were construed as imposing upon the district and the landowners therein a burden under which they may suffer a loss of water rights at the discretion of the United States, such a construction would be contrary to well established constitutional principles and protections" (App. p. 56; see also pp. 64, 145, 221).

Two questions are raised by this conclusion: First, do the water delivery provisions of the contracts[4] author-

[4]The Ivanhoe and Madera contracts are based on section 9(e) of the Reclamation Project Act of 1939 (App. p. 245). The Santa Barbara contracts are based both on section 9(e) and section 9(c)(2) of the same act (App. pp. 241-242).

ize cessation of water delivery at the end of the contract term? Second, assuming that federal law and the contracts do authorize cessation of delivery, is this "contrary to well established constitutional principles and protections" (App. p. 56)? Neither question can be or was decided by reference to state law. Federal questions, *i.e.* the interpretation and constitutionality of federal statutes are exclusively involved.

II. THE FEDERAL QUESTIONS ARE SUBSTANTIAL.

In their motion to dismiss the appellees make no effort to challenge our assertion that the issue of the constitutionality of the 160-acre water limitation is of overwhelming importance. Undoubtedly they realize the futility of even trying to deny it in the face of these facts: (1) the United States Supreme Court has never passed on the constitutionality of this basic provision of federal reclamation law; (2) there is a current conflict of state supreme court decisions on this issue; and (3) the manner in which this issue is decided will have a profound effect on the entire western reclamation program.

The appellees, however, have at least attempted to minimize the importance of the questions on the provisions of the contract governing water delivery and payment and title to facilities. This they have done, first, by denying that these questions are federal in nature. We have already demonstrated herein that the California Supreme Court did not rest its holdings on these matters on any independent non-federal ground.

The second method employed by the appellees was to rely upon the 1956 federal statute supplementing section 9(e) of the *Reclamation Project Act of 1939* (Act of July 2, 1956, App. pp. 246-249). The appellees argue that because the statute authorizes the modification of existing water delivery contracts to include "repayment and other provisions in the contracts quite different from those in the contracts before the court below and this Court" (Mo. Dis. pp. 17-18), the present contract provisions "do not present a continuing problem" (*id.* p. 18). Modification of existing contracts under this 1956 statute, as the appellees correctly point out (*id.* p. 17), is discretionary with the contracting district. There is nothing in the record indicating that the type of modification the appellees have in mind is desired by the districts involved in this litigation or the some 34 other districts who have entered into 9(e) contracts (Jurisdictional Statement, p. 32). The fact is that renegotiation and alteration of the present contracts could very well subject the districts to annual costs for water much higher than their present obligation. Hence, this 1956 statute cannot be used to deflate the obvious importance of these issues—issues which also have never before been considered by the United States Supreme Court.

Like the California Supreme Court, the appellees place heavy reliance on the decision in *United States v. Gerlach Live Stock Co.*, 339 U.S. 725 (1950), as establishing that by virtue of section 8 of the *Reclamation Act of 1902*, federal law forbids the Secretary of the Interior from applying the 160-acre water limitation on reclamation project water deliveries in California (Mo. Dis. pp. 18-20). But

the *Gerlach* case held only that if property rights recognized under state law are taken by the United States in connection with the construction and operation of a federal reclamation project, the owner of the right is entitled to compensation. The *Gerlach* case did not even suggest, nor has any other case before those now being appealed, that section 8 of the *Reclamation Act of 1902* requires the United States to deliver water to those claiming rights under State law when to do so would be directly contrary to later, more specific federal statutes. We deny that section 8 has such an effect (See *Nebraska v. Wyoming*, 325 U.S. 589, 615 (1945). "We do not suggest that where Congress has provided a system of regulation for federal projects it must give way before an inconsistent state system"). The only ground on which the California court's interpretation of section 8 can be urged to be insubstantial is that it is so obviously wrong that it warrants a summary reversal.

CONCLUSION.

For the reasons stated herein it is urged that the motion to dismiss be denied and that this court enter an order noting probable jurisdiction.

Dated: June 24, 1957.

Respectfully submitted,

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JOHN T. FEY, Clerk

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1957

Nos. 122, 123, 124, 125

THE IVANHOE IRRIGATION DISTRICT,
Plaintiff and Appellant,
vs.
ALL PARTIES AND PERSONS, etc.,
Defendants,
THE STATE OF CALIFORNIA,
Defendant and Appellant,
COURTNEY McCRACKEN,
Defendant and Appellee.
No. 122

THE MADERA IRRIGATION DISTRICT,
Plaintiff and Appellant,
vs.
ALL PERSONS, etc.,
Defendants,
THE STATE OF CALIFORNIA,
Defendant and Appellant,
CARL F. STEINER, et al.,
Defendants and Appellees.
No. 123

THE MADERA IRRIGATION DISTRICT,
Defendant and Appellant,
vs.
PHILLIP and JANE E. ALBONICO,
Plaintiffs and Appellees.
No. 124

THE SANTA BARBARA COUNTY WATER AGENCY,
Plaintiff and Appellant,
vs.
ALL PARTIES AND PERSONS, etc.,
Defendants,
MAURICE A. BALAAM, et al.,
Defendants and Appellees.
No. 125

Appeals from the Supreme Court of California.

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Subject Index

	Page
Opinions below	2
Jurisdiction	2
I. There is no procedural obstacle to jurisdiction	4
II. The validation proceedings required by Federal law are cases or controversies within the meaning of Article III of the Constitution	5
Statutes involved	8
Questions presented	9
Statement of the cases	13
I. The cases and the contracts	13
II. The reasoning of the California court	17
Summary of the argument	20
Argument	28
I. The decisions rest solely on Federal grounds	28
A. The possible State grounds of invalidity were rejected by the California court	29
B. Only Federal grounds are common to the Ivanhoe and Santa Barbara cases	29
C. The grounds of invalidity are all Federal	31
1. Invalidity of Federal laws	32
2. If the Federal laws were valid the contracts would be valid	33
3. Invalidity of the contracts under Federal law	35
4. Invalidity of the contracts because of possible interpretations	37
D. Inter-action of State and Federal laws raises Federal questions	38
II. These cases are properly appealable	39

Page

III. The water delivery restrictions are valid 43

A. Federal law requires inclusion of the acreage limitation in these contracts 43

1. The plain language of Section 46 requires the limitation 43

2. Section 46 continues the original and general policy 45

3. The general policy applies unless expressly altered by Congress 47

4. Congress has refused to adopt a special policy for the Central Valley project 49

B. The 160 acre water limitation is a constitutional means of achieving wide distribution of the Federal subsidy involved in the delivery of irrigation water from Federal reclamation projects 52

1. The constitutional justification for the limitation 52

2. Analysis of the California court's holding of invalidity 54

3. The sole justification for existence of the trust in water of the State announced by the California court is to invalidate the limitation 56

4. The effect of Section 8 of the Reclamation Act of 1902 on the power of the United States to apply the limitation and obtain the necessary water rights 57

5. The limitation does not deprive owners of excess land of any inchoate beneficial water rights owned by them without due process of law and does not deny them the equal protection of the laws 61

6. Section 46 of the Omnibus Adjustment Act of 1926 is an "applicable" and "relevant" Act of Congress under California Water Code Sections 23197(a) and 23200 63

Page

IV. The provisions of the contracts relating to water delivery and payment are valid 66

A. These provisions conform literally with Federal law 66

B. Analysis of the objections of the California court to the water delivery and payment provisions 71

C. Federal law does not require that a water supply contract under Section 9(e) of the Reclamation Project Act of 1939 contain a construction obligation for repayment by the district in 40 years 72

D. Federal law is not violated by the fact that the water delivery provisions of the contracts may not be in conformance with State laws and regulations concerning the control of public utilities 79

E. The water delivery provisions of the contracts do not reserve to the United States the right arbitrarily to discontinue water delivery at the end of the contract term 82

V. The provision of the contracts respecting title to works is valid 86

Conclusion 91

Index to Appendix

Appendix A

Page

Reclamation Act of 1902 (32 Stat. 388) 93

Appendix B

Omnibus Adjustment Act of 1926 (44 Stat. 636) 95

Appendix C

Act of August 26, 1937 (50 Stat. 844) 97

Appendix D

Reclamation Project Act of 1939 (53 Stat. 1187) 99

Appendix E

Act of July 2, 1956 (70 Stat. 483, 43 U. S. C. A. sec. 485h-1 (1956 Supp.)) 105

Appendix F

California Irrigation District Federal Cooperation Law (California Water Code, Division 11, Part 6, Chapter 2) 109

Appendix G

Santa Barbara County Water Agency Act (Calif. Stats. 1945, ch. 1501, p. 2780, as amended by Calif. Stats. 1949, ch. 12, p. 24, 1 Deering's Calif. Water Code Ann., Act 7303 (1954), West Calif. Water Code App. §§51-6, 51-6.3, and 51-11.10) 113

Appendix H

California Water Code Section 22250 117

Appendix I

California Water Code, Division 11, Part 5, Chapter 4 118

Table of Authorities Cited

Cases*			Pages
Albonico v. Madera Irr. Dist.:			
47 Cal.2d 695,	306 P.2d 894,	AJS 180	2
47 Cal.2d 697-698,	306 P.2d 896,	AJS 183	14, 16, 29
Allen v. Railroad Commission:			
179 Cal. 68, 175 P. 466 (1918)			24
Central Irrigation District, In re:			
117 Cal. 382, 49 P. 354 (1897)			6
Federal Power Commission v. Niagara Mohawk Power Corp.:			
347 U.S. 239 (1954)			25
Federal Power Commission v. Oregon:			
349 U.S. 435 (1955)			20, 24
Fidelity National Bank v. Swope:			
274 U.S. 123 (1927)			6, 7
Flournoy v. Wiener:			
321 U.S. 253 (1944)			3, 38, 39
Henkel v. United States:			
237 U.S. 43 (1915)			22
Hollywood C. of C. v. Railroad Comm.:			
192 Cal. 307, 219 P. 983 (1923)			24
Hopkins Savings Ass'n v. Cleary:			
296 U.S. 315 (1935)			40
Hurley v. Kincaid:			
285 U.S. 95 (1932)			22
Ivanhoe Irr. Dist. v. All Parties:			
47 Cal.2d 597,	306 P.2d 824,	AJS 1	2
47 Cal.2d 606-607,	306 P.2d 829,	AJS 2	7
47 Cal.2d 618-619,	306 P.2d 836,	AJS 19-21	21
47 Cal.2d 620,	306 P.2d 837,	AJS 22	34
47 Cal.2d 623,	306 P.2d 839,	AJS 27	21
47 Cal.2d 625,	306 P.2d 840,	AJS 30	54

*The abbreviation AJS refers to the Appendices to the Jurisdictional Statement. The Ivanhoe, Madera, Albonico and Santa Barbara opinions of the California Supreme Court have not been reprinted in the Record (R. iii, iv, v), but are reprinted in the Appendices to the Jurisdictional Statement.

Ivanhoe Irr. Dist. v. All Parties:			Pages
47 Cal.2d 625,	306 P.2d 841,	AJS 30	19
47 Cal.2d 626,	306 P.2d 841,	AJS 31	55, 56
47 Cal.2d 626,	306 P.2d 842,	AJS 31-32	19
47 Cal.2d 626,	306 P.2d 841,	AJS 32	55
47 Cal.2d 627,	306 P.2d 841,	AJS 32-33	56
47 Cal.2d 627,	306 P.2d 841,	AJS 33	19, 56
47 Cal.2d 627-628,	306 P.2d 842,	AJS 33-34	58
47 Cal.2d 627-628,	306 P.2d 841-842,	AJS 33-35	19
47 Cal.2d 627-628,	306 P.2d 842,	AJS 33-35	58
47 Cal.2d 628,	306 P.2d 842,	AJS 34	58
47 Cal.2d 628,	306 P.2d 842,	AJS 35	19, 58
47 Cal.2d 628-629,	306 P.2d 842-843,	AJS 35	55
47 Cal.2d 630,	306 P.2d 843,	AJS 37-38	28, 32
47 Cal.2d 630,	306 P.2d 843-844,	AJS 38	29
47 Cal.2d 630-631,	306 P.2d 843-844,	AJS 38	71
47 Cal.2d 630-631,	306 P.2d 844,	AJS 38-39	18
47 Cal.2d 630-631,	306 P.2d 844,	AJS 38-40	11
47 Cal.2d 631,	306 P.2d 844,	AJS 38-40	19, 33 n. 4
47 Cal.2d 631,	306 P.2d 844,	AJS 39	86, 87
47 Cal.2d 631,	306 P.2d 844,	AJS 39-40	87
47 Cal.2d 631,	306 P.2d 844,	AJS 40	11
47 Cal.2d 632,	306 P.2d 845,	AJS 40-41	41
47 Cal.2d 636,	306 P.2d 847,	AJS 46	19
47 Cal.2d 636,	306 P.2d 847,	AJS 46-47	30, 65
47 Cal.2d 636-638,	306 P.2d 847-848,	AJS 46-49	56
47 Cal.2d 636-639,	306 P.2d 847-849,	AJS 46-49	18
47 Cal.2d 636,	306 P.2d 847,	AJS 47	10, 34
47 Cal.2d 637,	306 P.2d 848,	AJS 47	21
47 Cal.2d 637,	306 P.2d 848,	AJS 48	19, 55
47 Cal.2d 637-638,	306 P.2d 848,	AJS 48	10
47 Cal.2d 638,	306 P.2d 848,	AJS 49	10
47 Cal.2d 638,	306 P.2d 848-849,	AJS 50	41
47 Cal.2d 638,	306 P.2d 849,	AJS 50	41
47 Cal.2d 638-639,	306 P.2d 849,	AJS 50	9, 18, 41
47 Cal.2d 639,	306 P.2d 849,	AJS 50-51	10, 55
47 Cal.2d 639,	306 P.2d 849,	AJS 51	10, 33, 34, 55, 56, 58, 64
47 Cal.2d 639-640,	306 P.2d 849,	AJS 52	86
47 Cal.2d 639-640,	306 P.2d 849-850,	AJS 52	71
47 Cal.2d 640,	306 P.2d 849,	AJS 52	18, 19, 33 n. 4

Ivanhoe Irr. Dist. v. All Parties:			Pages
47 Cal.2d 640,	306 P.2d 849-850,	AJS 52	11, 35, 72
47 Cal.2d 641,	306 P.2d 850,	AJS 54	12
47 Cal.2d 641-642,	306 P.2d 851,	AJS 54-56	72
47 Cal.2d 641-643,	306 P.2d 850-851,	AJS 54-56	20
47 Cal.2d 642,	306 P.2d 851,	AJS 55	36
47 Cal.2d 642,	306 P.2d 851,	AJS 55-56	11, 18, 36, 79-80, 81
47 Cal.2d 642-643,	306 P.2d 851,	AJS 56	18
47 Cal.2d 643,	306 P.2d 851,	AJS 56	12, 13, 37, 72, 82
47 Cal. 2d 644,	306 P.2d 852,	AJS 58-59	72
47 Cal.2d 644,	306 P.2d 852,	AJS 59	81
47 Cal.2d 645,	306 P.2d 853,	AJS 59	10, 18
47 Cal.2d 646-647,	306 P.2d 854,	AJS 62	17, 29
47 Cal.2d 647-648,	306 P.2d 854,	AJS 63	11
47 Cal.2d 648,	306 P.2d 854,	AJS 63	86
47 Cal.2d 648,	306 P.2d 854,	AJS 63-64	19
47 Cal.2d 648,	306 P.2d 854-855,	AJS 64	37, 72
47 Cal.2d 658,	306 P.2d 861,	AJS 78-79	52
47 Cal.2d 658,	306 P.2d 861,	AJS 79	54, 60
47 Cal.2d 658,	306 P.2d 861,	AJS 79-80	52
47 Cal.2d 662,	306 P.2d 864,	AJS 85-86	88

Jett Bros. Co. v. City of Carrolton:
252 U.S. 1 (1920) 39

Kalb v. Feuerstein:
308 U.S. 433 (1940) 40

Lawrence v. State Tax Comm.:
286 U.S. 276 (1932) 82

Madera Irr. Dist. v. All Persons:			
47 Cal.2d 681,	306 P.2d 886,	AJS 139	2
47 Cal. 2d 686,	306 P.2d 889,	AJS 143	83
47 Cal. 2d 687,	306 P.2d 890,	AJS 145	29
47 Cal.2d 687-688,	306 P.2d 890,	AJS 145	40
47 Cal.2d 688,	306 P.2d 890,	AJS 145	37, 56, 71, 72, 82
47 Cal.2d 688-689,	306 P.2d 890,	AJS 146	57

Madera Irr. Dist. v. All Persons: Pages
47 Cal.2d 691, 306 P.2d 892, AJS 150-151 57
47 Cal.2d 692-693, 306 P.2d 893, AJS 152 57
47 Cal.2d 693-694, 306 P.2d 893-894, AJS 153-154 ....17, 29
47 Cal.2d 694, 306 P.2d 894, AJS 154 .....14, 29

Market Street R. Co. v. Comm.:
324 U.S. 548 (1945) 5

Monongahela Navigation Co. v. United States:
148 U.S. 312 (1893) 27

Nebraska v. Wyoming:
325 U.S. 589 (1945) 24, 60, 80

New York v. United States:
326 U.S. 572 (1946) 84

People v. Linda Vista Irr. Dist.:
128 Cal. 477, 61 P. 86 (1900) 7

Petrie v. Nampa etc. Irrig. Dist.:
248 U.S. 154 (1918) 6

Red Cross Line v. Atlantic Fruit Co.:
264 U.S. 109 (1924) 40

Santa Barbara County Water Agency v. All Persons:
47 Cal.2d 699, 306 P.2d 875, AJS 205 2
47 Cal.2d 703, 306 P.2d 878, AJS 206 7
47 Cal.2d 707-713, 306 P.2d 880-884, AJS 211-221.... 29
47 Cal.2d 711-713, 306 P.2d 883-884, AJS 218-221 57
47 Cal.2d 713, 306 P.2d 884, AJS 221..12, 14, 17, 29, 31, 37, 40, 82
47 Cal.2d 713-714, 306 P.2d 884, AJS 222 .....17, 29

Smith v. Kansas City Title & Trust Co.:
255 U.S. 180 (1921) 38

S. R. A., Inc. v. Minnesota:
327 U.S. 558 (1946) 37, 83

Standard Oil of California v. Johnson:
316 U.S. 481 (1942) 38

Stephan v. United States:

Steward Machine Co. v. Davis: Pages
301 U.S. 548 (1937) 63

Sweezy v. New Hampshire:
354 U.S. 234 (1957) 3

Tregea v. Modesto Irr. Dist.:
164 U.S. 179 (1896) 6

Tulare Irr. Dist. v. Shepard:
185 U.S. 1 (1902) 6

United States v. Appalachian Power Co.:
311 U.S. 377 (1940) 20, 84

United States v. Buffalo Pitts Co.:
234 U.S. 228 (1914) 22

United States v. Carmack:
329 U.S. 230 (1946) 22, 60

United States v. Gerlach Live Stock Co.:
339 U.S. 725 (1950) 22, 24-25, 43, 52, 58, 59

United States v. Willow River Co.:
324 U.S. 499 (1945) 62

Warner v. Goltra:
293 U.S. 155 (1934) 42

Wehrle v. W. & P. Commrs.:
211 Cal. 70, 293 P. 67 (1930) 30

West Virginia v. Sims:
341 U.S. 22 (1951) 27, 30, 83

Wickard v. Filburn:
317 U.S. 111 (1942) 62, 63

Wilson v. Cook:
327 U.S. 474 (1946) 34, 37, 38

Wissner v. Wissner:
338 U.S. 655 (1950) 40

Worcester Nat. Bank, Ex Parte:
279 U.S. 347 (1929) 40

Yearsley v. Ross:

Statutes of the United States Pages

1912, Aug. 9, § 3, 37 Stat. 266, 43 U.S.C. § 544 46
1914, Aug. 13, § 12, 38 Stat. 689, 43 U.S.C. § 418 ..... 46, 47
1937, May 27, § 1, 50 Stat. 208 47
1937, Aug. 26, § 2, 50 Stat. 850 ..... 8, 21, 43, 49, 59, 97-98
1938, June 16, § 1, 52 Stat. 764, 43 U.S.C. § 386 48
1940, Nov. 29, § 1, 54 Stat. 1219 48
1943, March 10, § 2, 57 Stat. 14, 16 U.S.C. § 835a 47
1949, Oct. 14, § 2, 63 Stat. 852 79
1950, Sept. 26, § 2, 64 Stat. 1036 79
1952, June 27, § 1, 66 Stat. 282 47
1954, Aug. 28, § 1, 68 Stat. 890 48
1954, Sept. 3, § 1, 68 Stat. 1190 48
1955, Aug. 12, § 1, 69 Stat. 719 79
1956, July 2, 70 Stat. 483, 43 U.S.C.A. § 485 h-1 (1956 supp.) 8, 66-67, 68, 73, 81, 105-108
§ 1(1) 77, 85
§ 1(2) 77, 85
§ 1(3) 78, 81
§ 1(4) 85
§ 1(6) 81
§ 2 85
1956, Aug. 1, § 2(b), 70 Stat. 777 47
1956, Aug. 6, § 5(c), 70 Stat. 1046 47
1957, July 24, 71 Stat. 309 47
1957, Sept. 2, 71 Stat. 590 47
1957, Sept. 4, 71 Stat. 608 47
Boulder Canyon Project Act of 1928, 45 Stat. 1057, 43 U.S.C. §§ 617-617t 48
§ 6, 45 Stat. 1061, 43 U.S.C. § 617e 48
Interior Department Appropriation Act of 1927, 44 Stat. 479 ..... 47, 66

Omnibus Adjustment Act of 1926: Pages
§ 45, 44 Stat. 648, 43 U.S.C. § 423(d) 66
§ 46, 44 Stat. 649, 43 U.S.C. § 423(e) ..3, 5, 8, 9, 14, 16, 18, 25, 32, 34, 40, 43,44, 45, 55, 56, 63, 64, 66, 95-96
§ 48, 44 Stat. 650, 43 U.S.C. § 423(f) 41

Reclamation Act of 1902:
§ 4, 32 Stat. 389, 43 U.S.C. § 461 66
§ 5, 32 Stat. 389, 43 U.S.C. § 431 .....8, 45, 93
§ 6, 32 Stat. 389, 43 U.S.C. § 498 ....8, 16, 19, 26, 88, 93-94
§ 7, 32 Stat. 389, 43 U.S.C. § 421 .....22, 59
§ 8, 32 Stat. 390, 43 U.S.C. §§ 372, 383 ..3, 8, 10, 11, 12, 19, 24, 36, 55, 58, 72, 80, 94
§ 10, 32 Stat. 390, 43 U.S.C. § 373 .....22, 59

Reclamation Extension Act of 1914, §§ 1, 2, 38 Stat. 686-687, 43 U.S.C. §§ 471, 472, 475 66

Reclamation Project Act of 1939:
§ 9(a), 53 Stat. 1194, 43 U.S.C. § 485 h (a) 21, 43
§ 9(c), 53 Stat. 1194, 43 U.S.C. § 485 h (c) ...3, 8, 12, 13,14, 25, 70, 71 n. 5, 99-100
§ 9(d), 53 Stat. 1195, 43 U.S.C. § 485 h (d) 8, 66, 67, 100-103
§ 9(e), 53 Stat. 1196, 43 U.S.C. § 485 h (e) ...3, 8, 11, 12, 14, 25, 32, 66, 67, 71 n. 5, 72, 103-104
§ 14, 53 Stat. 1197, 43 U.S.C. § 389 59

Second Deficiency Act of 1924, § 4 (F), 43 Stat. 702, 43 U.S.C. §§ 473, 474 66

Warren Act of 1911:
§ 1, 36 Stat. 925, 43 U.S.C. § 523 45-46
§ 2, 36 Stat. 926, 43 U.S.C. § 524 46

United States Code, Title 28:
§ 1257(1) 3, 39
§ 1346(a)(2) 60
§ 1491 60
§ 2101(c) 4
§ 2103 3

Statutes of California

Civil Code: Pag
§ 1643 .....
§ 3541 .....

Constitution, Art. XI, § 8 .....

Santa Barbara County Water Agency Act, Calif. Stat. 1945, c. 1501, p. 2780, as amended by Calif. Stats. 1949, c. 12, p. 18; 1 Deering's California Water Code Ann., Act 7303, West Calif. Water Code, Appendix 51 .....9, 113-1
§ 6 .....3, 10, 16, 36,
§ 6.3 10,
§ 10 .....
§ 10.1 .....
§ 11.10 .....

Water Code:
§ 22250 .....9, 30, 34, 65, 1
§§ 22670-22684 .....5, 9, 118-1
§§ 23175-23197 .....8, 63, 109-1
§ 23195 .....3, 10, 16, 38,
§§ 23195 et seq. .....
§ 23196 (b) 36,
§ 23196 (g) .....
§ 23197 .....3, 16,
§ 23197 (a) 10, 63, 64,
§ 23200 .....3, 8, 10, 16, 38, 56, 63, 63-64, 64, 65, 1
§ 23225 .....5, 8, 111-1
§§ 30000 et seq. .....
§ 31023 .....
§ 31025 .....
§ 31701 .....

Supreme Court Rules

Rule 11, par. 1 .....
Rule 16, par. 4 .....
Rule 40, par. (b) .....

Legislative Materials

	Pages
81 Cong. Rec. 3905, 4509, 4516, 4540, 4548, 4561, 6704 (1937)	49
H.R. 3961, 78th Cong. 2d Sess.	50
H.R. Doc. No. 146, 80th Cong. 1st Sess. (1947) (Central Valley Project):	
p. 5	69
pp. 9-10	69
pp. 12-14	52
pp. 17-22	69
H.R. Doc. No. 587, 80th Cong. 2d Sess. (1948) (Santa Barbara Project)	43
p. 22	69
pp. 30-32	52
pp. 33-34	69
pp. 78-79	13
Hearings before House Committee on Appropriations on H.R. 6958, 75 Cong. 1st Sess. 1597 (1937)	50
H.R. Rep. No. 1754, 84 Cong. 2d Sess. (1956):	
p. 2	73-75
p. 6	78
H.R. Report. Special Subcommittee on Irrigation and Reclamation 111-112 (1952)	27
S. 2217, 84th Cong. 2nd Sess. (1956)	88
S. 413, 85th Cong. 1st Sess. (1957)	90
Hearings before Senate Committee on Commerce on H.R. 3961, 78th Cong., 2d Sess. (1944)	51
Hearings before Subcommittee of Senate Committee on Public Lands on S. 912, 80th Cong., 1st Sess. (1947)	51
Sen. Rep. No. 2241, 84th Cong., 2d Sess. 2 (1956)	75-77
Sen. Rep. No. 2379, 84th Cong., 2d Sess. 2 (1956)	89
Sen. Rep. No. 291, 85th Cong., 1st Sess. 2 (1957)	90

Official Letters, Opinions and Reports

Pages

Letter, Hon. Ray Lyman Wilbur to Imperial Irrigation District, Feb. 24, 1933 48

Opinions, Solicitor of the Department of the Interior:
M-33902, May 31, 1945 49
M-35047, May 24, 1948 68

Adams, Irrigation Districts in California (State of Calif., Division of Engineering, etc., Bull. No. 21) 199-203 (1929) 14

California Districts Securities Commission, Report 1954-55 (1956) pp. 30-31 27
p. 31 ..... 15 n.2

Montgomery and Clawson, History of Legislation and Policy Formation of the Central Valley Project (U.S. Dept. of Agric., Bur. of Agric. Econ. 1946):
pp. 133-136 49
p. 171 79

Law Reviews and Text

Note, Supreme Court Review of State Interpretations of Federal Law Incorporated by Reference, 66 Harv. L. Rev. 1498, 1502 (1953) 38

Taylor, Destruction of Federal Reclamation Policy? The Ivanhoe Case, 10 Stanf. L. Rev. 76 (1957):
pp. 92-96 ..... 52-53, 62
pp. 100 et ff. 45

3 Williston, Contracts, § 620, pp. 1785-6 (Rev'd ed. 1936) .. 83

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1957

Nos. 122, 123, 124, 125

THE IVANHOE IRRIGATION DISTRICT, *Plaintiff and Appellant,* vs. ALL PARTIES AND PERSONS, etc., *Defendants,* THE STATE OF CALIFORNIA, *Defendant and Appellant,* COURTNEY MCCRACKEN, *Defendant and Appellee.*	No. 122
THE MADERA IRRIGATION DISTRICT, *Plaintiff and Appellant,* vs. ALL PERSONS, etc., *Defendants,* THE STATE OF CALIFORNIA, *Defendant and Appellant,* CARL F. STEINER, et al., *Defendants and Appellees.*	No. 123
THE MADERA IRRIGATION DISTRICT, *Defendant and Appellant,* vs. PHILLIP and JANE E. ALBONICO, *Plaintiffs and Appellees.*	No. 124
THE SANTA BARBARA COUNTY WATER AGENCY, *Plaintiff and Appellant,* vs. ALL PARTIES AND PERSONS, etc., *Defendants,* MAURICE A. BALAAM, et al., *Defendants and Appellees.*	No. 125

Appeals from the Supreme Court of California.

APPELLANTS' OPENING BRIEF.

These are appeals from four companion decisio of the California Supreme Court holding fede

statutes invalid. Pursuant to these holdings that court invalidated three contracts concerning the delivery of water from two federal reclamation projects in California to public agencies of this state. The questions involved in these four appeals are closely related. This court has ordered the cases consolidated for argument (R. 656). Hence, this one brief is being submitted by appellants for all four cases.

OPINIONS BELOW.

The opinions of the California Supreme Court are reported as follows:[1]

Case No. 122, *Ivanhoe Irr. Dist. v. All Parties*, 47 Cal.2d 597, 306 P.2d 824, AJS 1;

Case No. 123, *Madera Irr. Dist. v. All Persons*, 47 Cal.2d 681, 306 P.2d 886, AJS 139;

Case No. 124, *Albonico v. Madera Irr. Dist.*, 47 Cal.2d 695, 306 P.2d 894, AJS 180;

Case No. 125, *Santa Barbara County Water Agency v. All Persons*, 47 Cal.2d 699, 306 P.2d 875, AJS 205.

JURISDICTION.

By its order of October 14, 1957, this court postponed consideration of the question of jurisdiction to the hearing of these cases on their merits. Jurisdic-

[1]These opinions are reprinted in the Appendices to Jurisdictional Statement. References to the pages of this reprint are included with the citations of the opinions in this brief and are designated thus: AJS.

tion will, therefore, be discussed at the outset of this brief (Rule 16, par. 4; cf. *Sweezy v. New Hampshire*, 354 U.S. 234 (1957)).

These four appeals are taken pursuant to 28 U.S.C. § 1257 (1) on the ground that in each case the validity of statutes of the United States has been drawn in question and the decisions are against their validity.

Presented with the appealable issues are a number of reviewable issues not in themselves appealable (*Flournoy v. Wiener*, 321 U.S. 253, 263 (1944)). If the court should find that there are no appealable issues, the reviewable issues may nevertheless be considered as on certiorari (28 U.S.C. § 2103).

The appealable issues are the validity of section 46 of the Omnibus Adjustment Act of 1926 (44 Stat. 649, 43 U.S.C. § 423(e)), and sections 9(c) and 9(e) of the Reclamation Project Act of 1939 (53 Stat. 1194, 1196, 43 U.S.C. §§ 485 h(c), 485 h(e)).

The reviewable questions, not capable by themselves of being brought to this court by appeal, are the interpretation of the above sections; the interpretation of section 8 of the Reclamation Act of 1902 (32 Stat. 390, 43 U.S.C. §§ 372, 383); the interpretation of state law as applied to the United States because of the reference to state law in section 8; and the interpretation of federal law as applied to state agencies because of the references to federal law in California Water Code sections 23195, 23197 and 23200 and section 6 of the Santa Barbara County Water Agency Act (Calif. Stats. 1945, c. 1501, p. 2787).

The possible jurisdictional problems are as follows:

1. Is there any procedural obstacle to assuming jurisdiction?

2. Do the three cases which are special validation proceedings, i.e., *Ivanhoe, Madera* and *Santa Barbara*, present cases or controversies within the meaning of Article III of the Constitution?

3. Do the decisions below rest on an adequate or, indeed, any non-federal basis?

4. Which is the proper remedy, appeal or certiorari?

Each of these questions should be answered in favor of the conclusion that the jurisdiction of this court on appeal has been properly invoked. The discussion of the third and fourth questions depends on a consideration as a whole of the opinions of the California court. It has therefore been postponed until after the statement of the cases (pp. 28 to 42 herein). But the discussion of the first two questions is brief and uncomplicated. It follows immediately.

I. THERE IS NO PROCEDURAL OBSTACLE TO JURISDICTION.

"The time factors upon which jurisdiction rests" have been met (Rule 40, par. (b)):

The notices of appeal in each of these cases were filed within the ninety days allowed (28 U.S.C. § 2101 (c); Rule 11, par. 1). The decisions of the California Supreme Court in each of the cases were filed on

January 24, 1957. Rehearings were denied in each on February 19, 1957, and the judgments thereby became final (*Market Street R. Co. v. Comm'n.*, 324 U.S. 548, 549-552 (1945)). The notices of appeal in *Madera, Albonico* and *Santa Barbara* were filed on March 11, 1957. The notice in *Ivanhoe* was filed on April 23, 1957. Thus these appeals are in all respects timely, neither premature nor tardy.

II. THE VALIDATION PROCEEDINGS REQUIRED BY FEDERAL LAW ARE CASES OR CONTROVERSIES WITHIN THE MEANING OF ARTICLE III OF THE CONSTITUTION.

Section 46 of the Omnibus Adjustment Act of 1926 provides: "No water shall be delivered upon the completion of any new [reclamation] project until a contract . . . shall have been made with an irrigation district . . . and the execution of said contract . . . shall have been confirmed by a decree of a court of competent jurisdiction" (44 Stat. 649, 43 U.S.C. § 423 (e)).

Three of these cases, *Ivanhoe, Madera* and *Santa Barbara,* are "validation" or "confirmation" proceedings brought to comply with this statutory requirement and the corresponding requirements in the contracts (R. 41-42, 218, 504, 535, 567). State law specifically authorizes these special proceedings to determine the validity of a district's contracts (Calif. Water Code §§22670 *et seq.*, 23225), and of the contracts of the Santa Barbara County Water Agency and its member units (Santa Barbara County Water

Agency Act, § 11.10, Calif. Stats. 1945, c. 1501, p. 2797). These proceedings resemble ordinary actions for declaratory relief.

Confirmation proceedings have long been known to California law (*In re Central Irrigation District,* 117 Cal. 382, 49 Pac. 354 (1897)). They were invented as a device to enhance the attractiveness of district obligations by cutting off the right of the district or its landowners to themselves attack the obligations at some future date (*Tregea v. Modesto Irr. Dist.,* 164 U.S. 179, 181 (1896); cf. *Tulare Irr. Dist. v. Shepard,* 185 U.S. 1, 26 (1902)).

To our knowledge, validation proceedings, as such, have been before this court on only three occasions: *Tregea v. Modesto Irr. Dist.,* 164 U.S. 179 (1896); *Petrie v. Nampa etc. Irrig. Dist.,* 248 U.S. 154 (1918); and *Fidelity National Bank v. Swope,* 274 U.S. 123 (1927). There would be no question of justiciability except that in *Tregea* this court dismissed the case on the ground that there was no case or controversy (164 U.S. at 189). The question there was whether the district had authority to issue bonds, but the suit was brought before the bonds had been issued and before the district had assumed any obligation (164 U.S. 185). The court felt that the proceeding was not adversary in character and was an effort to obtain a merely advisory opinion.

In *Petrie,* however, this court refused to dismiss a validation proceeding on the basis of *Tregea* (248 U.S. at 157). The district presented a proposed con-

tract with the United States Reclamation Service for "examination, approval and confirmation" (248 U.S. 155). The contract had been approved by the state court. The writ of error was dismissed on the ground that the decision was based on an adequate state ground rather than on the ground of absence of a case or controversy.

Finally, in *Fidelity Nat. Bank v. Swope*, this court held that a proceeding to validate an assessment was a case or controversy. The proceedings were found to be judicial and not legislative or administrative, and the reversal of normal parties was held immaterial (274 U.S. at 131). *Tregea* was distinguished on the ground that it rested on this court's interpretation of the California statute (274 U.S. at 133).

But since *Tregea*, the California court has, three times at least, interpreted the California statute to provide for a judicial proceeding. Once was in the *Ivanhoe* case itself (47 Cal.2d 606-607, 306 P.2d 829, AJS 2), again in the *Santa Barbara* case (47 Cal.2d 703, 306 P.2d 878, AJS 206), and the other was on the first opportunity after *Tregea* had been decided (*People v. Linda Vista Irr. Dist.*, 128 Cal. 477, 61 Pac. 86 (1900)).

Under these circumstances it is submitted that the reasoning of this court in *Fidelity Nat. Bank v. Swope* should control (274 U.S. at 130-131). Since these proceedings are required by law, the collusive element which this court inferred in the *Tregea* case is completely absent. (See 274 U.S. at 133, pointing

out that *Tregea* was "not adversary, being a proceeding by the trustee of the irrigation district against the district itself. . . .") Furthermore, the opinion here will not be merely advisory because the transactions involved are already partially executed, not merely executory.

STATUTES INVOLVED.

The statutes involved in these appeals are set forth in the appendix to this brief as follows:

1. Reclamation Act of 1902, §§5, 6, 8, 32 Stat. 388, 389, 390, 43 U.S.C. §§431, 498, 372, 383 Appendix A, pp. 93-94 herein.
2. Section 46 of the Omnibus Adjustment Act of 1926, 44 Stat. 649, 43 U.S.C. §423e Appendix B, pp. 95-96 herein.
3. Section 2 of the Act of August 26, 1937, 50 Stat. 850 Appendix C, pp. 97-98 herein.
4. Section 9 (c), (d), and (e) of the Reclamation Project Act of 1939, 53 Stat. 1194, 1195, 1196, 43 U.S.C. §§485h (c), (d), (e) Appendix D, pp. 99-104 herein.
5. Act of July 2, 1956, 70 Stat. 483 (1956), 43 U.S.C.A. §485h-1 (1956 Supp.) Appendix E, pp. 105-108 herein.
6. Irrigation District Federal Cooperation Law, California Water Code §§23175-23197, 23200, 23225 Appendix F, pp. 109-112 herein.

7. The Santa Barbara County Water Agency Act, Calif. Stats. 1945, c. 1501, p. 2780, as amended by Calif. Stats. 1949, c. 12, p. 18, §§6, 6.3, and 11.10; 1 Deering's California Water Code Ann. Act 7303, West Calif. Water Code App. §§51-6, 51-6.3 and 51-11.10 Appendix G, pp. 113-116 herein.

8. California Water Code §22250 Appendix H, p. 117 herein.

9. California Water Code §§22670-22684 Appendix I, pp. 118-120 herein.

QUESTIONS PRESENTED.

The questions raised by these appeals which are common to all four cases are as follows:

1. Section 46 of the Omnibus Adjustment Act of 1926 (44 Stat. 649, 43 U.S.C. §423e) precludes delivery of water from federal reclamation projects to land held in private ownership by any one owner in excess of 160 irrigable acres unless certain conditions are met.

(a) Does this section apply only to public lands of the United States or does it also apply to lands in private ownership (47 Cal.2d 638-639, 306 P.2d 849, AJS 50)?

(b) Does it deprive owners of more than 160 acres of land in federal reclamation projects in California of property without due process of law, and does it deny them equal protection of

the laws (47 Cal.2d 636, 637-638, 638, 645, 306 P. 2d 847, 848, 853, AJS 47, 48, 49, 59)?

(c) The California Irrigation District Federal Cooperation Law and The Santa Barbara County Water Agency Act provide for the delivery and distribution of water acquired under any contract with the United States "under the relevant acts of Congress" and "in accordance with the applicable acts of Congress" (Calif. Water Code §§23195, 23197(a), 23200; The Santa Barbara County Water Agency Act, §§6, 6.3, Calif. Stats. 1945, c. 1501, pp. 2787, 2788). Is this section 46 one of the "relevant" and "applicable" acts of Congress referred to in these California statutes (47 Cal.2d 639, 306 P.2d 849, AJS 50-51)?

(d) Does the application of this section 46 depend in any way on whether "the title to the water to be purveyed is [or is] not an unlimited title in the United States" (47 Cal.2d 639, 306 P.2d 849, AJS 51)?

(e) Does section 8 of the Reclamation Act of 1902 (32 Stat. 390, 43 U.S.C. §§372, 383) require the United States to deliver water in accordance with a trust under state law, assuming such trust prevents the imposition of the limitation in this section 46 (47 Cal.2d 639, 306 P.2d 849, AJS 51)?

2. Does the validity of the contracts involve the nsideration of the water rights of anyone and parcularly of the United States?

3. Can a trust imposed on water rights pursuant to state law prevent the United States from acquiring the water rights it needs to accomplish a federal purpose?

Certain additional questions present in all the cases except *Albonico,* are as follows:

4. Does federal law provide that upon repayment the districts contracting with the United States must be granted title to "works for the storage and distribution of water to and by the district" (47 Cal.2d 647-648, 306 P.2d 854, AJS 63, "not dependent on a future and necessarily discretionary act of Congress" (47 Cal.2d 631, 306 P.2d 844, AJS 40)?

5. Does federal law require that the contracts with the United States specify an obligation of the contracting district for construction of storage and delivery works (other than local distribution systems for the use of individual districts) to be repaid in 40 years (47 Cal.2d 630-631, 640, 306 P.2d 844, 849-850, AJS 38-40, 52)?

6. Does section 8 of the Reclamation Act of 1902 (32 Stat. 390, 43 U.S.C. §§372, 383) submit the United States to the provisions of state law regulating public utilities where Congress by section 9(e) of the Reclamation Project Act of 1939 (53 Stat. 1196, 43 U.S.C. §485h(e)) has provided a system of regulation for federal projects which may be inconsistent with the state system (47 Cal.2d 642, 306 P.2d 851, AJS 55-56)?

7. Section 9(e) of the Reclamation Project Act of 1939 (53 Stat. 1196, 43 U.S.C. §485h(e)) authorizes the Secretary of the Interior to enter into contracts to furnish water for irrigation purposes from federal reclamation projects. The term of such contracts is not to exceed forty years.

(a) Does this section authorize the United States at its discretion to discontinue water service at the end of the contract term (47 Cal.2d 641, 306 P.2d 850, AJS 54)?

(b) If it does, does it impose upon landowners a burden "'under which they may suffer the loss of water rights at the discretion of the United States" so that it is "contrary to well-established constitutional principles and protections" (47 Cal.2d 643, 306 P.2d 851, AJS 56)?

The remaining questions are present only in *Santa Barbara,* which alone involves contracts for the delivery of water for municipal water supply purposes. The questions, inferentially but not explicitly raised in the opinion below (47 Cal.2d 713, 306 P.2d 884, AJS 221) are as follows:

8. Does section 8 of the Reclamation Act of 1902 (32 Stat. 390, 43 U.S.C. §§372, 383) submit the United States to the provisions of state law regulating public utilities where Congress by section 9 (c)(2) of the Reclamation Project Act of 1939 (53 Stat. 1194, 43 U.S.C. §485h(c)) has provided a system of regulation for federal projects serving water for municipal water supply purposes which may be inconsistent with the state system?

9. Section 9(c)(2) of the Reclamation Project Act of 1939 authorizes the Secretary of the Interior to enter into contracts to furnish water for municipal water supply purposes from federal reclamation projects. The term of such contract is not to exceed forty years.

(a) Does this section authorize the United States at its discretion to discontinue water service at the end of the contract term?

(b) If it does, does it impose upon water users a burden "under which they may suffer the loss of water rights at the discretion of the United States" and is therefore "contrary to well-established constitutional principles and protections" (47 Cal.2d 643, 306 P.2d 851, AJS 56)?

STATEMENT OF THE CASES.

I. THE CASES AND THE CONTRACTS.

The Ivanhoe Irrigation District and the Santa Barbara County Water Agency were organized for the purpose of obtaining water through the United States Bureau of Reclamation, the one from the Central Valley Project (Iv. Pl. Ex. J., pp. 2-3) and the other from the Cachuma Unit of the Santa Barbara County Project (House Doc. No. 587, 80th Cong. 2d Sess. 78-79 (1948), S.B. Df. Ex. A, R. 647-648). The Madera district was organized in 1920 as successor to a district organized in 1888. Both the original and successor districts were opposed by large landowners.

Until the advent of the Central Valley Project the district was not able to secure an adequate water supply (Adams, Irrigation Districts in California (State of Calif., Division of Engineering etc. Bull. No. 21) 199-203 (1929)).

The three contracts involved in the four cases may, for present purposes, be treated as substantially identical. Thus the California Supreme Court decided the *Madera, Albonico* and *Santa Barbara* cases on the basis of the *Ivanhoe* case (47 Cal.2d 694, 697-698, 713, 306 P.2d 894, 896, 884, AJS 145, 183, 221). Elements common to each case are the validity, interpretation, and interpretation as affected by validity of section 46 of the Omnibus Adjustment Act of 1926 (44 Stat. 649, 43 U.S.C. §423(e)), and section 9(e) of the Reclamation Project Act of 1939 (53 Stat. 1196, 43 U.S.C. § 485h(e)), relating to water supplies for irrigation. The *Santa Barbara* case also involves section 9(c) of the Reclamation Project Act of 1939 (53 Stats. 1194), 43 U.S.C. §485h(c)) relating to municipal water supplies, but the other cases do not. Each of the contracts provides for delivery by the United States of an irrigation water supply to the district for a period of forty years at specified rates per acre foot payable annually in advance of delivery (R. 17-21, 192-197, 482-486). Further, the Ivanhoe and Madera contracts, but not the Santa Barbara contract, provide for expenditure by the United States of funds for construction of a system of works to distribute this water supply to the lands within the districts and for repayment by the districts, in forty

equal annual installments without interest, of the amount spent for this purpose.

The so-called "acreage limitation" is in each of the contracts (R. 36-40, 213-216, 497-501).[2] Despite its name, it is a restriction on the delivery of water, not on the ownership of the land.

The districts promise not to furnish water or service made available under the contract to more than 160 acres of irrigable land held by any landowner in the district (320 acres for a husband and wife). But if the owner agrees to sell his "excess" land within 10 years at an appraised price which does not include any enhancement in value resulting from the existing or prospective possibility of securing project water or service (R. 36, 213, 497-498), he may receive water delivered under the contract for all his land (R. 39, 215-216, 500). If he does not desire to sell his excess land he nevertheless may designate his non-excess land and be eligible for project water delivery to 160 or 320 acres, as the case may be (R. 39-40, 216, 500-

[2]The Santa Barbara County Water Agency has entered into contracts with its member units, the City of Santa Barbara and the Carpinteria, Goleta, Montecito and Summerland County water districts. Each of these also contains the acreage limitation and the validity of these contracts is also in issue in this proceeding (R. e.g. 528-532, 560-564). Only the City of Santa Barbara and the Montecito contracts are included in the printed record (R. 505, 537) as, with the exception of the district names, the provisions of the Montecito, Carpinteria, Goleta and Summerland contracts are identical. These six contracts were validated by the trial court in the instant proceeding (R. 623-626). Three other contracts containing the limitation have been validated by final and unappealed decrees. These are between the United States and the Carpinteria, Goleta and Summerland districts for distribution systems under § 9(d) (Calif. Districts Securities Comm. Report, 1954-55, 31 (1956)).

501). These provisions were included because of the requirements of federal law (Omnibus Adjustment Act of 1926, §46, 44 Stat. 649, 43 U.S.C. §423(e)). If the federal law is valid, they are authorized by state law (Calif. Water Code §§23195, 23197, 23200; Santa Barbara County Water Agency Act, §§6, 6.3; Calif. Stats. 1945, c. 150, pp. 2787, 2788). There is nothing in the contracts prohibiting the owner from keeping his excess land and irrigating it with water pumped from underground or acquired from any non-project surface supply.

The Ivanhoe and Madera contracts provide that title to all the project works, including the distribution systems being built with federal funds, shall remain in the United States until otherwise provided by Congress (R. 36, 212). The provision is a restatement of federal law (Reclamation Act of 1902, §6, 32 Stat. 389, 43 U.S.C. §498).

The *Ivanhoe*, *Madera* and *Santa Barbara* cases arose when the districts brought the confirmation proceedings required by law (pp. 5-6 herein). The *Albonico* case resulted from the effort of the Albonicos, husband and wife, to have their land in excess of 320 acres excluded from the Madera district. As decided by the California Supreme Court the *Albonico* case involves only the validity of the water delivery restriction in the Madera contract (47 Cal.2d 697-698, 306 P.2d 896, AJS 183).

II. THE REASONING OF THE CALIFORNIA COURT.

The California Supreme Court either rejected or found it unnecessary to pass upon the miscellaneous attacks made on the contracts under state law (47 Cal. 2d 646-647, 693-694, 713-714, 306 P.2d 854, 893-894, 884, AJS 62, 153-154, 222). The grounds of invalidity of the contracts are all federal. As the court said in *Santa Barbara* in summarizing its opinions in *Ivanhoe* and *Madera:*

> "In their fifth affirmative defense the defendants raise issues which have been discussed and disposed of in Ivanhoe Irr. Dist. v. All Parties, ante, p. 597 [306 P.2d 824], and in Madera Irr. Dist. v. All Persons, ante, p. 681 [306 P.2d 886]. In accordance therewith it is concluded that the excess land provisions of the contracts involved here, which are substantially the same as those in the Ivanhoe and Madera contracts, are inapplicable and if not declared to be so would deprive the landowners of the member units of their property rights without due process of law and constitute a denial of the equal protection of the laws; that the United States is acting in its proprietary capacity as a purveyor of the domestic waters of the state to the agency and its member units; that it is bound to observe and comply with the laws of the state with reference to the rights of the water users being served, and that the contract is invalid insofar as it, by implication or otherwise, provides that the United States can arbitrarily cause to be discontinued the distribution of water to those for whose benefit the right to the water was acquired in the first instance" (47 Cal.2d 713, 306 P.2d 884, AJS 221).

More specifically, the various bases of invalidity are:

1. The 160-acre water limitation provisions of the contracts (R. 36-40, 213-216, 497-501) are invalid because (a) the statute on which they are based, section 46 of the Omnibus Adjustment Act of 1926 (44 Stat. 649, 43 U.S.C. §423e), does not apply as a matter of federal law to the delivery of water to privately owned land (47 Cal.2d 638-639, 306 P.2d 849, AJS 50), and (b) if it did, the statute would be unconstitutional as a deprivation of property without due process and a denial of equal protection of the laws (47 Cal.2d 636-639, 645, 306 P.2d 847-849, 853, AJS 46-49, 59).

2. The provisions of the contracts relating to delivery of and payment for a water supply (R. 17-21, 192-197, 482-486) are invalid because, contrary to federal law, (a) they do not provide for district repayment of a specific sum as the district's share of the construction cost of the main project storage and delivery works serving the districts (47 Cal.2d 630-631, 640, 306 P.2d 844, 849, AJS 38-39, 52), and (b) they authorize the United States to act as a public utility without complying with state public utility regulation (47 Cal.2d 642, 306 P.2d 851, AJS 55-56), and also because (c) they are unconstitutional to the extent that they reserve to the United States the right to discontinue water delivery at the end of the contract term (47 Cal.2d 642-643, 306 P.2d 851, AJS 56).

3. The contract provisions reserving title to all project facilities in the United States until otherwise provided by Congress (R. 36, 212; Reclamation Act

of 1902, §6, 32 Stat. 389, 43 U.S.C. §498), is contrary to the debtor-creditor relationship between the district and the United States derived from federal law (47 Cal.2d 631, 640, 648, 302 P.2d 844, 849, 854, AJS 38-40, 52, 63-64).

The holdings of unconstitutionality are predicated on the theory that the United States is under a duty to deliver water in perpetuity and without regard to the federal statutory restrictions. This duty grows out of the trust which the court has found encumbers the title to all water rights of the United States held for project purposes no matter how or from whom they were acquired (47 Cal.2d 628, 306 P.2d 842, AJS 35). The trust adheres to the water perpetually no matter into whose hands the title thereto passes (47 Cal.2d 625, 626, 306 P.2d 841, 842, AJS 30, 31-32). The trust is for "all of the people" who are in a "position to demand benefits without discrimination" (47 Cal.2d 627, 306 P.2d 841, AJS 33), and "who may become entitled thereto" (47 Cal.2d 628, 306 P.2d 842, AJS 35). Section 8 of the Reclamation Act of 1902 requires that this trust right be specifically recognized (47 Cal.2d 627-628, 306 P.2d 841-842, AJS 33-35). Thus when the contract requires the limitation to be enforced it deprives the landowner of his property, "the use of water to which [he] is entitled" (47 Cal.2d 636, 306 P.2d 847, AJS 46), and is invalid because "the right of an owner of real property to use . . . his property cannot be constitutionally limited on the basis of the amount of property he owns" (47 Cal.2d 637, 306 P.2d 848, AJS 48). Similarly both

section 8 and the trust rights prevent validation of the contract because it is subject to an inference that the landowners "are not entitled to water rights which continue beyond the 40-year term of the contract" (47 Cal.2d 641-643, 306 P.2d 850-851, AJS 54-56).

SUMMARY OF THE ARGUMENT.

Sharply distinguished from the cases at hand are those heretofore decided by this court involving conflicts between the states and the United States. For example, there is no conflict here as to regulatory jurisdiction (cf. *U.S. v. Appalachian Power Co.*, 311 U.S. 377 (1940)), or as to conflicting regulations (cf. *Federal Power Commission v. Oregon*, 349 U.S. 435 (1955)).

What is involved is the authority of the United States and various state agencies to cooperate in the conduct of the Central Valley and Cachuma reclamation projects. The authority for and mode of such cooperation is specifically provided in both state and federal law. Since the cases arise as a result of a cooperative effort, any references to actual or purported controversies over the relative roles of the state and the United States would be oblique and misleading. The compatability of these roles is here insured by statutes obviously drafted for that purpose.

The California court has, however, not considered the case in terms of authority, and has instead considered it in terms of title. It has endowed property

in water with attributes and limitations such that the United States cannot, in its view, acquire the rights needed to perform these contracts. It seems to reason that since the water rights needed to perform the contracts cannot be acquired, the contracts must be invalid. This is an essential, but not the only, fallacy of the opinion below.

Adherence to this fallacy is made bewildering by the fact that the California court recognizes that none of the forms of private rights heretofore known under the law of California have been impaired, and that the United States is proceeding to acquire rights in accordance with state law (47 Cal.2d 618-619, 623, 306 P.2d 836, 839, AJS 19-21, 27). Perhaps this is the reason that the instant cases are cases of first impression. The California court states it can find no authority for applying the limitation "where the federal government had . . . only a trustee's interest in the water to be applied" (47 Cal.2d 637, 306 P.2d 848, AJS 47) (But cf. Jurisdictional Statement pp. 26-27). The quoted words demonstrate the complete circularity of the reasoning. Of course, no such case could be found because none exists. And none exists because never before has it been held that property rights in a state could be endowed with attributes which would prevent the United States from acquiring the rights it needs to accomplish a federal purpose.

The Central Valley Project was specifically authorized by Congress (50 Stat. 850). The Cachuma Project was authorized under section 9(a) of the Reclama-

tion Project Act of 1939 (53 Stat. 1193, 43 U.S.C. §485h(a)). Congress' constitutional power to undertake these "big bundles of big projects" is "clear and ample" (*United States v. Gerlach Live Stock Co.*, 339 U.S. 725, 738 (1950)).

The power to undertake the projects has been implemented by the grant of broad authority to acquire property for project purposes. The Central Valley authorization provides: ". . . the Secretary of the Interior may . . . acquire by proceedings in eminent domain, or otherwise, all lands, rights-of-way, water rights, and other property necessary for said [project] purposes." And reclamation law generally gives the secretary authority, which "could hardly have been conferred in more comprehensive terms," to acquire property for reclamation purposes by condemnation, purchase or appropriation informally (Reclamation Act of 1902, §§7, 10, 32 Stat. 389, 390, 43 U.S.C. §§373, 421; *Henkel v. United States*, 237 U.S. 43, 50 (1915); *United States v. Buffalo Pitts Co.*, 234 U.S. 228, 233 (1914)). The fact that the vendor or condemnee may lack power to convey does not result in a corresponding incapacity of the United States to acquire (*United States v. Carmack*, 329 U.S. 230, 239 (1946); *Henkel v. United States*, 237 U.S. 43, 51 (1915)).

Since the United States can acquire whatever rights it needs, and since the acquisition is not contingent on payment in advance (*Hurley v. Kincaid*, 285 U.S. 95, 104 (1932)), it follows that the United States' water rights are irrelevant in these proceedings. The only questions here are whether the contracts accord

with the requisite state and federal grants of authority, because if they do, the United States has the means to acquire the rights necessary to perform the contracts.

But the assumption that the "excess" landowners have rights which the United States must respect specifically because if lacks the power to acquire them, is not enough to lead to the result of invalidity of the contracts. Even if such rights existed the contracts would be justified on the theory that the United States has the power to condition and control the use of the storage and distribution works which it has built and owns. If the "excess" owners have rights in undeveloped water, there is nothing in these contracts which would prevent them from exercising their rights by building their own project.

Obviously, if the contracts are to be invalidated because they do not encompass an affirmative duty of the United States to deliver water to the "excess" owners in violation of federal law, an additional element must be found. The California court does this by imposing on the United States the obligations of a public utility. This it does despite the restrictions in the federal statutes which, if the utility analogy has any meaning, would be restrictions on the scope of the United States' dedication of its property to a public use.

In this respect the United States is apparently less advantageously situated than a private distributor of water. A private distributor can so control his conduct as to avoid the obligations of a public utility

(*Allen v. Railroad Commission*, 179 Cal. 68, 81-85, 175 Pac. 466, 471-473 (1918)), or, if he assumes them, not be compelled to render service beyond the scope of his dedication (cf. *Hollywood C. of C. v. Railroad Com.*, 192 Cal. 307, 310-311, 219 Pac. 983, 984-985 (1923)).

Inconsistent with the utility obligation, but consistent with the holding that the United States has lost control over its property, is the California court's injection of the issue of title to works. Paradoxically that court finds in federal law a "debtor-creditor" relationship which will require the United States to transfer title to its works despite specific federal legislation to the contrary. In other words the utility's customers will eventually become its owners. Why this happy anomaly results only when the United States is the utility is left unexplained.

The conclusions that the United States cannot acquire what it needs for a federal purpose, and that it must assume duties inconsistent with federal law, depend on the California court's tortured interpretation of section 8 of the Reclamation Act of 1902. That section is construed to give the state that veto power over the specific operation of federal projects which this court has heretofore denied (*Nebraska v. Wyoming*, 325 U.S. 589, 615 (1945); *F.P.C. v. Oregon*, 349 U.S. 435, 445-446 (1955)). Ignored is the actual operation of section 8, which is that those who have valid property rights vested under state law are entitled to compensation if those rights are taken for reclamation purposes (*United States v. Gerlach Live*

Stock Co., 339 U.S. 725, 734-739 (1950); cf. *F.P.C. v. Niagara Mohawk Power Corp.*, 347 U.S. 239, 250-251 (1954)). Of course, we do not concede that in this instance rights have been "taken" or that the "rights" involved are not of such an evanescent nature as not to be "property" in any meaningful sense.

We start, therefore, with these assumptions: (1) no rights are involved; (2) if there are rights they have not been taken; and (3) if there are rights which must be taken, the authority to take and pay for them exists. The question then becomes one of inspection of the contracts to ascertain their conformity to state and federal laws. Conformity to state law has been settled by the decisions below. In this brief we attempt to show meticulously the conformity to federal law.

Federal law plainly requires that delivery of water from the reclamation projects involved in these cases be subject to the 160-acre water limitation, and that the contracts so state (Omnibus Adjustment Act of 1926, §46, 44 Stat. 649, 43 U.S.C. §423(e)).

In providing for delivery of water for a forty-year term at a charge per acre foot, without requiring repayment in forty years of a specific sum of money representing a share of the construction cost of the project dams and main canals, the contracts are fully consistent with federal law (Reclamation Project Act of 1939, §§9(c), (e), 53 Stat. 1194, 1196, 43 U.S.C. §§485h (c), (e)). That they do not set forth with

particularity under what terms and conditions water delivery may be continued after the forty-year term of their water delivery provisions expire, neither violates federal law nor creates an implication that when these contracts terminate water delivery may be arbitrarily discontinued. Indeed, the opportunity to contract for continued water delivery is expressly guaranteed by federal legislation enacted since these contracts were negotiated.

Finally, the provisions in the Ivanhoe and Madera contracts reserving to the United States the title to all project property are not in conflict with federal law; they merely restate what federal law requires in any event (Reclamation Act of 1902 §6, 32 Stat. 389, 43 U.S.C. §498).

Our position is based not only on the foregoing legal grounds but also on practical and even moral grounds.

The practical reasons can be illustrated by examples. The Goleta County Water District in the Santa Barbara County Water Agency has a validated contract with the United States for construction of a distribution system. Under this it is obligated to pay the United States some $3,600,000. The funds for payment are intended to be derived from the delivery of water. Therefore, if the Santa Barbara contracts are invalidated the district will either have no means of meeting its obligations, or will have to assess its landowners for the useless system. The Carpenteria and Summerland districts are obligated under similar validated contracts. Further, throughout the Central Valley Project there are at least sixteen unappealed and final judgments validating

similar contracts (Calif. Districts Securities Comm. Report 1954-55, pp. 30-31 (1956)). It is only possible to speculate on the financial hardships which would be worked on these districts through retroactive denial of their arrangements, or alternatively, the administrative complexities resulting from having some of these contracts valid and the remainder invalid.

This leads to the moral ground of our position. Not only do we feel responsible for attempting to vindicate the contracts already validated, but also we feel responsible for preserving the state's ability to cooperate with the United States. The state has for years actively sought federal expenditures for reclamation (H.R. Report, Special Subcommittee on Irrigation and Reclamation 111-112 (1952); Iv, Ex. N). The position we take avoids the embarrassment which would be raised by soliciting federal aid on the one hand and thereafter denying capacity to impose federal conditions on the other (cf. *West Virginia v. Sims*, 341 U.S. 22 (1951)). To paraphrase the language of this court, whatever logic could be summoned to support a contrary view would have some vice, at least the vice of injustice (*Monongahela Navigation Co. v. United States*, 148 U.S. 312, 338 (1893)).

All the cases were decided on the basis of *Ivanhoe*. This is consistent only with exclusive reliance on federal grounds, for there is no state ground common to the *Ivanhoe*, *Madera* and *Alboyico* cases on the one hand, and the *Santa Barbara* case on the other. Each point which might, in isolation, be considered an interpretation of state law is, in fact, contingent upon the

court's decision of interwoven federal questions affecting the capacity of the United States to enter into and implement the contracts. The various bases of invalidity are specifically set out under the Statement of the Case (pp. 18-19 herein). These grounds of invalidity are all federal and are predicated on the theory that the United States is under a duty to deliver water in perpetuity and without regard to federal statutory restrictions.

ARGUMENT.

I. THE DECISIONS REST SOLELY ON FEDERAL GROUNDS.

In their motion to dismiss, the appellees argue that the cases depend solely on state law, i.e., whether the districts have authority to enter into the contracts is a matter of state law (Mo. Dis. 16), and that even if the United States were "the absolute owner in fee of the waters within the Central Valley Project and can condition or limit their use as it sees fit, still the judgments of the court below would stand and the contracts would of necessity be declared invalid (Mo. Dis. 22)."

These contentions are in error. Possible state grounds of decision were definitely excluded. All the cases were decided on the basis of *Ivanhoe*, a technique consistent only with exclusive reliance on federal grounds since there is no state ground common to the *Ivanhoe*, *Madera* and *Albonico* cases on the one hand, and the *Santa Barbara* case on the other. Finally, each point which might, in isolation, be considered an interpretation of state law is, in fact, contingent upon the court's decision of interwoven federal questions affecting the capacity of the United States to enter into and implement the contracts. There is

nothing in California law prohibiting contracts with the United States for reclamation purposes, and the California court so states (47 Cal.2d 630, 306 P.2d 843, AJS 37-38).

A. The Possible State Grounds of Invalidity Were Rejected by the California Court.

The contracts and the state laws authorizing them were attacked on a variety of state grounds, e.g., that they constituted an improper abandonment or delegation of state powers to the United States. These were rejected by the court (47 Cal.2d 630, 646-647, 693-694, 713-714, 306 P.2d 843-844, 854, 893-894, 884, AJS 38, 62, 153-154, 222). Indeed, the greater portion of the *Santa Barbara* opinion consists of a discussion and rejection of various attacks under state law on the existence of the agency and its relation with its member units (47 Cal.2d 707-713, 306 P.2d 880-884, AJS 211-221). Contrary rulings on these points might have constituted adequate state grounds preventing review here. But the actual rulings are favorable to the contracts, and thus show that the grounds of invalidity are federal and only federal.

B. Only Federal Grounds Are Common to the Ivanhoe and Santa Barbara Cases.

The California Supreme Court decided the *Madera*, *Albonico* and *Santa Barbara* cases on the basis of the *Ivanhoe* case (47 Cal.2d 687, 694, 697-698, 713, 306 P.2d 890, 894, 896, 884, AJS 145, 154, 183, 221). These cases do not involve a common state ground. In *Ivanhoe* the court said:

> "The duty of both of the contracting parties in the performance of their obligations to the landowners in the district is set forth in section

22250 of the Water Code. It is there provided that water distributed by districts shall be 'apportioned ratably to each landowner upon the basis of the ratio which the last assessment against his land for district purposes bears to the whole sum assessed in the district' except as provided otherwise in the code. No pertinent exceptions appear" (47 Cal.2d 636, 306 P.2d 847, AJS 46-47).[3]

The appellees, relying on the above, urge that the decisions thus depend on California Water Code section 22250. Nevertheless, they describe the section correctly as a rule relating only to irrigation districts (Mo. Dis. 12, 13). Section 22250 does not apply to the Santa Barbara County Water Agency, which is not an irrigation district, or to its member units which are county water districts organized under the County Water District Law (Calif. Water Code §§30000 *et seq.*), or to its member unit, the City of Santa Barbara, which is a chartered city under California Constitution, Article XI, section 8. As a chartered city, Santa Barbara has a large degree of control over its water supply as a "municipal affair" not subject to the general laws of the state (Calif. Const. Art. XI, §8, par. 12; *Wehrle v. W. & P. Commrs.*, 211 Cal. 70, 73; 293 Pac. 67, 68 (1930)). An entirely different method of raising money—an *ad valorem* tax for district purposes and metered rates for water delivered to users—applies to the Santa Barbara County Water Agency and its member units (Calif. Water Code, §§31023, 31025, 31701; Santa Barbara

[3]This conclusion on the application of Calif. Water Code § 22250 raises federal questions not only because it relates to the duty of the United States but also because it is based on the assumption that delivery restrictions of the limitation are not applicable. See pp. 63-65 herein.

County Water Agency Act, §§10, 10.1, Calif. Stats. 1945, c. 1501, pp. 2792-2793, Calif. Stats 1949, c. 12, pp. 25-26).

If the California court had been relying on the interpretation of state law, each of the state laws relevant to each of the special situations would necessarily have been considered. Instead, these laws are not mentioned and the Santa Barbara contracts, both master and member unit, are invalidated on the authority of the irrigation district cases (47 Cal.2d 713, 306 P.2d 884, AJS 221). This is a compelling indication that only federal grounds were relied on, i.e., the inability of the United States to acquire the rights needed to fulfill its contracts, for only this ground is common to the *Santa Barbara* case and the irrigation district cases.

C. The Grounds of Invalidity Are All Federal.

There is nothing in California law that prohibits irrigation districts from contracting with the United States. Quite to the contrary, such contracts are specifically authorized by the Irrigation District Federal Cooperation Law (Calif. Water Code, §§23195 *et seq.*). This is pointed out in the *Ivanhoe* opinion:

> ". . . As stated it is certainly true that it was within the power of the district under the laws of this state to do in the first instance all that the United States is obligating itself to do under the contract with reference to the construction of a distributing system. The district was authorized to obtain funds for that purpose by borrowing from the United States with or without the issuance of irrigation district bonds (Wat. Code,

§§23280-23289) and it could contract for the payment for water distributed to it by or through an outside source at a fixed point of delivery upon the payment of the charges agreed upon from funds of its own, if available (Wat. Code §22228). In essence, therefore, we have here one party agreeing to provide the funds for construction work and undertaking to furnish water at a definite delivery point, and the other party agreeing to accept the water at that point with payment therefor at a fixed rate and repayment of the construction charges in installments within 40 years, coupled with what appears to be all sufficient assurances of security in the event of nonpayment. Within the compass of those provisions there can be no doubt of the right and power of the parties to lawfully contract" (47 Cal.2d 630, 306 P.2d 843, AJS 37-38).

1. Invalidity of Federal Laws.

What then in the present contracts did the California court find invalid? The answer is that the water delivery restrictions (acreage limitation) imposed by section 46 of the Omnibus Adjustment Act of 1926 are asserted to be invalid on the two grounds of denial of due process and equal protection. Also assertedly invalid on the one ground of denial of due process are the provisions of the contracts predicated on section 9(e) of the Reclamation Project Act of 1939, i.e., the provisions relating to delivery of and payment for a water supply.[4]

[4]The provision in the Madera and Ivanhoe contracts reserving title to all project facilities in the United States until otherwise provided by Congress were invalidated on the ground that they

These results are predicated on the theory that the United States is under a duty to deliver water in perpetuity and without regard to the federal statutory restrictions. These duties are said to grow out of the trust which the court says will encumber the title to all water rights of the United States held for project purposes, and which will disable the United States from following federal law (pp. 54-57 herein).

2. If the Federal Laws Were Valid the Contracts Would Be Valid.

That the judgments would be different if the California court's view of the rights of the United States were different is plain from the language of the *Ivanhoe* opinion. The court says:

> ". . . the federal law could be applicable only on the theory that the United States is the owner absolute of the domestic waters of the state with the right to the use thereof free from any trust relationship on behalf of the real owners thereof, namely, the water users in the district" (47 Cal. 2d 639, 306 P.2d 849, AJS 51).
>
> "If the United States, or the State of California or any of its agencies, should be declared to be the owner of the title to the water without restriction it would necessarily follow that it would have complete dominion and control over such property for the purposes of distribution or for any other incident of ownership and use. In such case the principles of law ap-

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conflict with the "debtor-creditor relationship existing between the United States and the district[s]" which the court derived from "applicable federal law" (47 Cal.2d 631, 640, 306 P.2d 844, 849, AJS 39-40, 52). This holding is one of interpretation rather than of validity of federal law.

plying to unrestricted ownership would control" (47 Cal.2d 620, 306 P.2d 837, AJS 22).

That the judgments would be different if the rights of the United States had been held to be different is not only evident from what the California court said, but also from what it did not say. Nowhere does the opinion intimate that the state agencies would be inhibited in their contracts with the United States if the United States were able to secure complete title. The closest approach is the statement that "No pertinent exceptions appear" to California Water Code section 22250 (47 Cal.2d 636, 306 P.2d 847, AJS 47). Nevertheless, the court did say:

> "Attention has been called to section 23200 of the Water Code providing that under contracts such as the one in question water 'shall be distributed and apportioned by the district in accordance with the applicable acts of Congress, the rules and regulations of the Secretary of the Interior thereunder, and the provisions of the contract'" (47 Cal.2d 639, 306 P.2d 849, AJS 51).

But section 46 of the Omnibus Adjustment Act of 1926 was held not to be an "applicable act of Congress" within the meaning of this section and, therefore, not a "pertinent exception" to California Water Code section 22250, because section 46 is unconstitutional.

This interaction of state and federal law raises a federal question. As was said in *Wilson v. Cook*, 327 U.S. 474, 486 (1946):

"The meaning of both statutes [state and federal] as applied in this case, is a federal question, since upon their construction depend rights, powers and duties of the United States."

3. Invalidity of the Contracts Under Federal Law.

In reaching its conclusion that the contract was invalid because it violated the "debtor-creditor" relationship (pp. 86-88 herein) the court again relied exclusively on federal law. This is plain from what it said about the relationship:

"We have heretofore declared the debtor-creditor nature of the contract in question. In arriving at that conclusion it was considered that *applicable federal law* requires that the contract specify a specific amount of money to be repaid by the district by installments, within 40 years; that this is an obligation for repayment of the cost of construction of storage and delivery works, and that the payment by the district be credited against this obligation" (47 Cal.2d 640, 306 P.2d 849-850, AJS 52, emphasis added).

Nowhere in its opinions did the California Supreme Court cite or refer in any way to state law as providing the incidents of the "debtor-creditor" relationship upon which that court predicated its conclusions on the validity of these aspects of the contracts. This omission was not inadvertent; there is no state law on the subject.

Again federal law was the basis of the conclusion of invalidity reached by the California court when it viewed the contracts' water delivery provisions as

placing the United States in the position of a water purveyor furnishing water at a price. The California court quoted the language of section 8 of the Reclamation Act of 1902 which states that the Secretary of the Interior shall proceed in conformity with state law relating to the control, appropriation, use or distribution of water used in irrigation (47 Cal. 2d 642, 306 P.2d 851, AJS 55), and then said:

> "It may fairly be said that the foregoing federal statutory provision remains in full force; that it controls the operations of the Department of the Interior so far as federal law is concerned, and that under the controlling state law, the furnishing of water to consumers by a utility must be subject to and be in conformity with certain rules and regulations established by or under the authority of the Constitution and the statutes of the state" (47 Cal.2d 642, 306 P.2d 851, AJS 55-56).

From this excerpt, it is clear that the California court depended on federal law, section 8 of the Reclamation Act of 1902, as authority for the conclusion that the contract had to conform to state public utility law in order to be valid. There is no intimation in any of the opinions in these cases that state law, of itself, makes execution of such a contract beyond the powers of the districts. Of course there could not be, since state law expressly authorizes districts to contract with the United States for a water supply as well as for other specified purposes (Calif. Wat. Code §23196(b); Santa Barbara County Water Agency Act §6, Calif. Stats. 1945, c. 1501, p. 2787).

4. Invalidity of the Contracts Because of Possible Interpretations.

Federal, not state, grounds are the predicates of the final question relative to the water delivery provisions of the contracts. The court stated:

> "If this contract were construed as imposing upon the district and the landowners therein a burden under which they may suffer a loss of water rights at the discretion of the United States, such a construction would be contrary to well-established constitutional principles and protections" (47 Cal.2d 643, 648, 688, 713, 306 P.2d 851, 854-855, 890, 884, AJS 56, 64, 145, 221).

Two questions are raised by this conclusion: First, do the water delivery provisions of the contracts authorize cessation of water delivery at the end of the contract term? Second, assuming that federal law and the contracts do authorize cessation of delivery, is this "contrary to well-established constitutional principles and protections" (47 Cal.2d 643, 306 P.2d 851, AJS 56)? Neither question can be or was decided by reference to state law. Federal questions, i.e., the interpretation and constitutionality of federal statutes and contracts are exclusively involved (*S.R.A. Inc. v. Minnesota,* 327 U.S. 558, 564 (1946)).

It thus appears that each point which might, in isolation, be considered an interpretation of state law, is in fact contingent upon the court's decision of interwoven federal questions affecting the capacity of the United States. Under these circumstances it is submitted that the interpretation of the state statutes is, in itself, a federal question (*Wilson v. Cook,* 327 U.S. 474, 486 (1946)).

D. Inter-action of State and Federal Laws Raises Federal Questions.

A further ground for considering the interpretation of state law to be a federal question is that California Water Code section 23200 and its companion sections 23195 and 23197 are instances of state laws referring to federal laws. That the interpretation of such state laws involves federal questions is demonstrated in *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180, 201-202 (1921), *Standard Oil of California v. Johnson*, 316 U.S. 481 (1942) and *Flournoy v. Wiener*, 321 U.S. 253 (1944).

These state statutes do not merely adopt a federal rule in an area where the federal rule would not otherwise be operative. They are the means whereby the state is enabling itself to take advantage of the substantial federal benefits available under the United States reclamation program by conforming with the federal conditions. It is a meaningless verbalism to say that all the state court did was to interpret the state law to see which federal laws applied and therefore raised only a state question (Mo. Dis., p. 14 n.). The reasons *why* the federal law is held inapplicable or not a "pertinent exception" are the determinant factors in ascertaining reviewability of this state law as one blended with federal law. This uniformity can be achieved only if there is one final arbiter to ascertain the validity of the cooperative effort (Note, *Supreme Court Review of State Interpretations of Federal Law Incorporated by Reference*, 66 Harv. L. Rev. 1498, 1502 (1953)).

State and federal cooperation depends, of course, on both state and federal law. If the California court had held that the state or its agencies could not cooperate with the United States for some reason peculiar to the state, it is conceivable that this might have been a question of state law alone (but cf. *West Virginia v. Sims*, 341 U.S. 22 (1951)). But the California court did not consider the state's ability to cooperate with the United States. It considered the United States' ability to acquire rights within the state. It found that ability lacking. Whether the lack is based on federal or state law, it nevertheless presents a federal question because it involves the capacity of the United States (*Wilson v. Cook*, 327 U.S. 474, 486 (1946)).

II. THESE CASES ARE PROPERLY APPEALABLE.

These cases are properly appealable if the validity of a federal statute is drawn into question and the decision is against its validity (*Flournoy v. Wiener*, 321 U.S. 253, 263 (1944)). The validity of a federal statute is "drawn into question" within the meaning of 28 U.S.C. section 1257 (1) if "the power to enact [the] statute as it is by its terms, or is made to read by construction, is fairly open to denial and denied . . ." (cf. *Jett Bros. Co. v. City of Carrolton*, 252 U.S. 1, 6 (1920)).

In the instant cases it is submitted that an appeal is proper. Although the California court interpreted the federal statute, it did not stop there but also

went on to hold the statute invalid. In this these cases differ from *Hopkins Savings Ass'n v. Cleary*, 296 U.S. 315 (1935). There the state court interpreted the statute to avoid the constitutional issue and went no further (296 U.S. at 332). The situation here resembles that in *Red Cross Line v. Atlantic Fruit Co.*, 264 U.S. 109, 120 (1924), i.e., a reading of the *Ivanhoe* opinion as a whole shows that the California court reached the result that section 46 of the Omnibus Adjustment Act of 1926 is inapplicable not merely as a matter of statutory construction but because it believed such a result is constitutionally required. This reading is corroborated by the court's own summaries in the other opinions (47 Cal.2d 687-688, 713, 306 P.2d 890, 884, AJS 145, 221). The result is to prevent the application of the federal statute by invalidating the contracts because they contain the required limitations on water delivery. Such a holding has been reviewed by appeal on at least three occasions (*Wissner v. Wissner*, 338 U.S. 655 (1950); *Kalb v. Feuerstein*, 308 U.S. 433 (1940); *Ex parte Worcester Nat. Bank*, 279 U.S. 347, 359, 360 (1929). (federal statute held invalid under state constitution)).

In the *Ivanhoe* case the state court's treatment of the problem of interpretation is so perfunctory and arbitrary that it is obvious that interpretation actually played no real part in its invalidation of the limitation. The state court first notes that the original version of the water delivery limitations prohibited the sale of the right to use water for more than one hun-

dred and sixty acres "in private ownership" (47 Cal. 2d 632, 306 P.2d 845, AJS 40-41). Then with baffling inconsistency it fails to note equivalent language in section 46 and goes on to hold that "section 46 may be deemed to apply to public lands alone" (47 Cal. 2d 638-639, 306 P.2d 849, AJS 50).

One reason assigned for this conclusion is that "the intention of the act [the Omnibus Adjustment Act of 1926] as shown by section 48 was the development of public lands . . ." (47 Cal.2d 638, 306 P.2d 849, AJS 50). Even if this description of section 48 of the act were correct, it is hardly reasonable that Congress intended a general statement of purpose in one section of the act to nullify a specific, unequivocal, mandatory direction to the Secretary of the Interior in another section of the act to apply the limitation to privately-owned land. Contrary to the California court's assertion, however, section 48 of the act does not even mention public land. It states:

> "The purpose of this act is the rehabilitation of the several reclamation projects and the insuring of their future success by placing them upon a sound operative and business basis, and the Secretary of the Interior is directed to administer this Act to those ends" (44 Stat. 650, 43 U.S.C. § 423f).

The second reason assigned for the conclusion is that it follows because section 46 is included in Title 43 of the United States Code, "Public Lands" (47 Cal.2d 638-639, 306 P.2d 848-849, AJS 50). Title 43 is not one of the titles enacted into positive law. The

California court has thus ignored the plain language of the section both as printed in the code and in the statutes at large; it has ignored the rule that even if some conclusion could be drawn from the location of the section in the code this conclusion could not prevail over the language of the statutes at large (*Stephan v. United States*, 319 U.S. 423, 426 (1943); and it has ignored the rule that conclusions as to interpretation cannot properly be drawn from the location of a section in a "prima facie" title of the code (*Warner v. Goltra*, 293 U.S. 155, 160-161 (1934)).

Although the language of the California court is in terms of interpretation, the result and the means whereby it was reached are so eccentric that it is incredible that the language was so intended. The rational explanation of this portion of the opinion is that the California court read out of the statute the language, "Such contract . . . shall . . . provide that all irrigable land held in private ownership by any one owner in excess of one hundred and sixty acres . . . shall [not] receive water . . . if the owners shall refuse [etc.] . . .", because it believed this result to be constitutionally required. This explanation is consistent with the balance of the opinion.

III. THE WATER DELIVERY RESTRICTIONS ARE VALID.

A. Federal Law Requires Inclusion of the Acreage Limitation in These Contracts.

1. The Plain Language of Section 46 Requires the Limitation.

Both the Central Valley Project and the Cachuma Project are federal reclamation projects. The Central Valley Project was authorized by Congress in section 2 of the Act of August 26, 1937 (50 Stat. 850), which states in pertinent part:

> ". . . except as herein otherwise specifically provided, the provisions of the reclamation law, as amended, shall govern the repayment of expenditures and the construction, operation and maintenance of the dams, canals, power plants, pumping plants, transmission lines, and incidental works deemed necessary to said entire project. . . ."

In *United States v. Gerlach Live Stock Co.*, 339 U.S. 725, 739 (1950), this court held that the language quoted above made the project a reclamation project subject to reclamation law.

The Cachuma Project was authorized by the Secretary of the Interior as a reclamation project in a report and finding of feasibility (H.R. Doc. No. 587, 80th Cong., 2nd Sess. (1948), S.B. Df. Ex. A, R. 647-648), pursuant to the procedure set forth in section 9(a) of the Reclamation Project Act of 1939 (53 Stat. 1194, 43 U.S.C. § 485h(a)). It is thus equally subject to reclamation law.

The 160 acre water limitation provisions of the contracts are based on section 46 of the Omnibus Ad-

justment Act of 1926 (44 Stat. 649, 43 U.S.C. § 423e). This section is the latest of a series of statutory provisions of general applicability relating to this subject. In pertinent part it provides that:

> "No water shall be delivered upon the completion of any new project or division of a project until a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or irrigation districts organized under State law. . . . Such contract or contracts with irrigation districts hereinbefore referred to shall further provide that *all irrigable land held in private ownership by any one owner in excess of one hundred and sixty irrigable acres* shall be appraised in a manner to be prescribed by the Secretary of the Interior and the sale prices thereof fixed by the Secretary on the basis of its actual bona fide value at the date of appraisal without reference to the proposed construction of the irrigation works; and that *no such excess land so held shall receive water from any project or division if the owners thereof shall refuse to execute valid recordable contracts for the sale of such lands under terms and conditions satisfactory to the Secretary of the Interior. . . .*" (Emphasis added.)

Obviously, under the plain words of this section, the limitation applies to service of water from a reclamation project to "all irrigable lands *held in private ownership* by any one owner in excess of one hundred and sixty irrigable acres" (See Taylor, *Destruction of Federal Reclamation Policy? The Ivanhoe Case,*

10 Stanf. L. Rev. 76, 100 et ff. (1957)). The incongruous efforts of the California court to avoid this plain meaning have already been discussed as they have some bearing on the proper remedy before this court (pp. 40-42 herein).

2. Section 46 Continues the Original and General Policy.

Section 46 of the Omnibus Adjustment Act of 1926 preserves the original and express policy of the Reclamation Act by continuing to apply the limitation to the delivery of project water to privately-owned lands. Section 5 of the Reclamation Act of 1902 contained a similar restriction:

> "No right to the use of water for land in private ownership shall be sold for a tract exceeding 160 acres to any one landowner . . ." (32 Stat. 389, 43 U.S.C. § 431).

Subsequent statutes of general applicability which adapted the water limitation to changing conditions made clear that it continued to cover water service to privately-owned lands.

The Warren Act of 1911 authorized irrigators of privately-owned land outside the boundaries of federal reclamation projects to use the surplus water storage or carrying capacity of the dams and canals of such projects. This was subject to the conditions, however, that:

> ". . . water so impounded, stored, or carried shall not be used other than as prescribed by law as to lands held in private ownership within Gov-

ernment reclamation projects . . ." (36 Stat. 925, 43 U.S.C. § 523);

and that:

". . . water shall not be furnished from any such reservoir or delivered through any such canal or ditch to any one landowner in excess of an amount sufficient to irrigate one hundred and sixty acres . . ." (36 Stat. 926, 43 U.S.C. § 524).

Section 3 of the Act of August 9, 1912 provided:

". . . nor shall water be furnished under said acts nor a water right sold or recognized for such excess [i.e.] . . . in excess of one farm unit as fixed by the Secretary of the Interior, as the limit of area per entry of public land or per single ownership of private land for which a water right may be purchased respectively, nor in any case in excess of one hundred and sixty acres . . ." (37 Stat. 265, 266, 43 U.S.C. § 544).

Finally, section 12 of the Act of August 13, 1914 provided:

"That before any contract is let or work begun for the construction of any reclamation project hereafter adopted the Secretary of the Interior shall require the owners of private lands thereunder to agree to dispose of all lands in excess of the area which he shall deem sufficient for the support of a family upon the land in question, upon such terms and at not to exceed such price as the Secretary of the Interior may designate; and if any landowner shall refuse to agree to the requirements fixed by the Secretary of the Interior, his land shall not be included within the

project if adopted for construction." (38 Stat. 689, 43 U.S.C. § 418).

3. **The General Policy Applies Unless Expressly Altered by Congress.**

That the 160 acre water limitation applies to all federal reclamation projects, irrespective of whether they contain public or private land, is shown by the fact that Congress has passed special laws when a different result has been desired. Some projects and classes of projects have been placed under special and sometimes more restrictive limitations. These are:

1. Sun River, Owhyhee, Vale and Baker Projects in the States of Idaho and Oregon (44 Stat. 479 (1926)).

2. Columbia Basin Project in the State of Washington (50 Stat. 208 (1937); 57 Stat. 14 (1943), 16 U.S.C. § 835a; 71 Stat. 590 (1957)).

3. San Luis Valley Project in the State of Colorado (66 Stat. 282 (1952)).

4. Washoe Project in the State of Nevada (70 Stat. 777 (1956)).

5. Small Reclamation Projects wherever authorized (70 Stat. 1046 (1956)).

6. Kendrick Project in the State of Wyoming (71 Stat. 608 (1957)).

7. East Bench Unit of the Missouri Basin Project in the State of Montana (71 Stat. 309 (1957)).

Other projects have been completely exempted by express language where no limitation was thought appropriate, as follows:

1. Colorado-Big Thompson Project in the State of Colorado (52 Stat. 764 (1938), 43 U.S.C. § 386).

2. Washoe County Water Conservation District of the Truckee Storage Project and the Pershing County Water Conservation District of the Humboldt River Project, both in the State of Nevada (54 Stat. 1219 (1940)).

3. Owl Creek Unit of the Missouri Basin Project in Wyoming (68 Stat. 890 (1954)).

4. Santa Maria Project in California (68 Stat. 1190 (1954)).

In a somewhat similar category is the Boulder Canyon Project Act (45 Stat. 1057 (1928), 43 U.S.C. §§ 617-617t) as it applies to Imperial Irrigation District in California. Section 6 of that act provides that water shall be delivered for "satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact" (45 Stat. 1061, 43 U.S.C. § 617e). Imperial Irrigation District had for many years prior to the Boulder Canyon Act diverted water from the Colorado River through its own works. The All-American Canal, authorized by the act, provided a new means for delivery of this water. Under these circumstances the Secretary of the Interior held that "this limitation does not apply to lands now cultivated and having a present water right." (Hon. Ray Lyman Wilbur to Imperial Irrigation District, Feb. 24, 1933.) The Imperial Irrigation District water delivery contract, which omits an excess land limitation requirement, was thereafter judicially confirmed in a

proceeding in which the acreage limitation was litigated and found not applicable. But when water was brought by the All-American Canal to lands in the Coachella Valley which had not theretofore been irrigated from the Colorado River, the limitation was applied and the contract with the limitation was judicially confirmed (Opinion M33902, May 31, 1945, Solicitor of the Department of the Interior).

4. Congress Has Refused to Adopt a Special Policy for the Central Valley Project.

There is no similar statutory exemption relating to either the Central Valley Project or the Cachuma Project. To the contrary, the legislative history of the Central Valley Project, the project responsible for most of the agitation in California against the limitation, supports the conclusion that the limitation was intended to apply.

First, it was repeatedly emphasized on the floor of Congress when the Central Valley Reauthorization Act (50 Stat. 850) was being debated that the Central Valley Project was to be a reclamation project with a major purpose of providing homes (81 Cong. Rec. 3905, 4509, 4516, 4540, 4548, 4561, 6704 (1937)). This is an objective which the limitation was designed to promote (Montgomery and Clawson, *History of Legislation and Policy Formation of the Central Valley Project*, 133-136 (U.S. Dept. of Agr. Bur. of Agric. Economics, 1946), Iv. St. Ex. 9).

Second, shortly after the act was passed, when appropriations for the Central Valley Project were

being considered by the House Committee on Appropriations, Representative Clarence F. Lea of California assured the committee that because of the 160 acre water limitation the project could not be used for the benefit of a few:

> "....a member of the subcommittee raised the question a while ago about the possibility of this improvement [Central Valley Project] being used for the benefit of bankers, or those who might become purchasers on account of the farmers being crowded out through foreclosure, or otherwise. I would call attention to the fact, which the committee is probably familiar with, that for several years, it has been the policy of the reclamation service to make contracts or to cover cases where the small ownership could procure the benefit of contracts for water; the general idea being to confine it to those tracts of land that would be sufficient to maintain one family, and the Department has taken a very decided position against permitting the reclamation service to use for speculative purposes and not for the benefit of settlers" (Hearings before House Committee on Appropriations on H.R. 6958, 75th Cong., 1st Sess. 1597 (1937)).

Third, at least two major attempts have been made to secure Congressional exemption of the Central Valley Project from the 160 acre water limitation. This itself is a recognition of the fact that in the absence of exemption the limitation governs. In 1944, the so-called "Elliot Amendment" to the Omnibus Rivers and Harbors Bill (H.R. 3961, 78th Cong., 2d Sess.) was passed by the House of Representatives. It provided:

> "Sec. 4. The excess-land provisions of the Federal reclamation laws shall not be applicable to lands which will receive a water supply from the Central Valley Project, California, reauthorized by section 2 of the Rivers and Harbors Act approved August 26, 1937."

This proposal was rejected by the Senate Committee on Commerce after much discussion (Hearings before Senate Committee on Commerce on H.R. 3961, 78th Cong., 2d Sess. (1944)). In 1947, S. 912, to exempt the Central Valley Project and two other projects from the limitation, was given extensive hearings before a subcommittee of the Senate Committee on Public Lands (Hearings before Subcommittee of Senate Committee on Public Lands on S. 912, 80th Cong., 1st Sess. (1947)), but was not reported out.

Statutory language, legislative history, and Congressional activity and refusals to act, thus all lead to the same conclusion. The 160 acre water limitation applies to the delivery of water to privately-owned land from every federal reclamation project unless it is exempted or subject to special restrictions by express statutory provisions. Since neither the Central Valley Project nor the Cachuma Project has received such special treatment, federal law requires the inclusion in the contracts of the limitation provisions which are contained.

B. The 160 Acre Water Limitation Is a Constitutional Means of Achieving Wide Distribution of the Federal Subsidy Involved in the Delivery of Irrigation Water From Federal Reclamation Projects.

1. The Constitutional Justification for the Limitation.

To provide the water required for the contracts, it was necessary for the federal government to construct storage and delivery facilities of great size and expense. These facilities are described in the feasibility and cost allocation reports on the Central Valley and Cachuma Projects (*Central Valley Project:* H.R. Doc. No. 146, 80th Cong., 1st Sess. 12-14 (1947); see also *United States v. Gerlach Live Stock Co.,* 339 U.S. 725, 728-729 (1950); *Cachuma Project:* H.R. Doc. No. 587, 80th Cong., 2d Sess. 30-32 (1948)). By the construction and operation of these facilities the federal government has made available to the irrigators of the Ivanhoe and Madera Irrigation Districts and the Santa Barbara County Water Agency water which they never before were able to receive (47 Cal.2d 658, 306 P.2d 861, AJS 79-80).

Under federal reclamation law, only a part of the cost of the dams, canals and distribution works attributable to irrigation is repayable to the federal government by the irrigators, and that without interest. The price of the water to the irrigator is, therefore, far less than its actual cost. As a result, with the delivery of each acre-foot of water the irrigator receives a federal subsidy. Chief Justice Gibson, dissenting, explained the significance of this subsidy in terms of percentages (47 Cal.2d 658, 306 P.2d 861, AJS 78-79; see also Taylor, *Destruction of Federal Reclamation*

Policy? The Ivanhoe Case, 10 Stanf. L. Rev. 76, 92-96 (1957)). The magnitude of the subsidy is not fully appreciated, however, until it is translated into dollars. This was done in a letter from six California Congressmen to the Attorney General of California after the California Supreme Court decisions in these cases had been announced (Pet. for Rehearing of Appellant State of California to California Supreme Court in *Ivanhoe Irrig. Dist. v. All Parties and Persons,* App. p. ii, contained in record in Case No. 122 herein):

> "The capital investment to put water on land under the Central Valley Project averages $350 per acre. If an irrigator owns 1,000 acres, the capital investment to serve his land is approximately $350,000. This money is interest-free and the interest cost to the federal government over the pay-out period roughly equals the capital investment. In other words, the interest on $350,000 over a 50-year period is roughly $350,000. This is a direct subsidy to the irrigator. Using the percentages on repayment referred to in Chief Justice Gibson's dissenting opinion, the irrigator will pay back approximately $123,000. The balance of the capital investment will be paid by public power revenues. This amounts to $227,000. Thus, the total subsidy to this 1,000 acre irrigator adds up to approximately $577,000."

"The water limitation was intended to prevent use of the reclamation service for speculative purposes, and it insures that the irrigators' subsidy and other benefits of federal irrigation projects will not go in disproportionate share to a few large landowners but

will be confined to holders of moderate-size tracts of land sufficient to maintain one family; its purpose, in other words, is to distribute the government benefits in accordance with the greatest good for the greatest number of individuals" (Gibson, C. J., dissenting, 47 Cal.2d 658, 306 P.2d 861, AJS 79). The effect of the limitation is merely to place a reasonable maximum on the benefit which any one person can gain from the use of federal irrigation facilities. The majority of the California court would reverse it to subsidize most those who own most. Without a limitation, it is obvious that the larger the landholdings of an irrigator and hence the greater the amount of project water delivery he requires, the larger would be his subsidy from the federal government.

c. Analysis of the California Court's Holding of Invalidity.

Despite the common-sense equity of the limitation, the California court has concluded it deprives owners of more than 160 acres of land of property without due process of law and denies them equal protection of law. Its reasoning seems to be as follows:

1. All the people of the State of California have an equitable interest or title in the unappropriated domestic waters of the State, the legal title to which is held by the State (47 Cal.2d 625, 306 P.2d 840, AJS 30).

2. The equitable interest of these beneficial owners is "an inchoate right" to use the water of the state "subject to like enforcement and equal protection of the law", although the right is dependent on com-

pliance with "reasonable terms and conditions" (47 Cal.2d 626, 306 P.2d 841, AJS 31, 32).

3. Under section 8 of the Reclamation Act of 1902 (32 Stat. 390, 43 U.S.C. §§ 372, 383) the United States as a matter of federal law has assumed the obligation of respecting these state-recognized beneficial rights. The United States therefore (a) may not acquire any rights in the waters of the State for reclamation project purposes except as limited by such rights (i.e., it may not acquire an "unlimited title"); and (b) may not deny reclamation project water delivery to the owners of such rights irrespective of the requirement of section 46 of the Omnibus Adjustment Act of 1926 that this be done (47 Cal.2d 628-629, 639, 306 P.2d 842-843, 849, AJS 35, 50-51).

4. If the United States had the power to acquire an "unlimited title", i.e., could become the "owner absolute of the domestic waters of the State", (47 Cal.2d 639, 306 P.2d 849, AJS 51) it then could constitutionally apply the 160 acre water limitation provisions of § 46 of the Omnibus Adjustment Act of 1926 (44 Stat. 649, 43 U.S.C. § 423e) to privately-owned land in California. But since the United States does not have that power, application of the limitation is unconstitutional. This is because the limitation restricts an owner of excess land in the use and enjoyment of the beneficial right owned by him in the water of the State "on the sole basis of the amount of property he owns" (47 Cal.2d 637, 306 P.2d 848, AJS 48), a basis which is arbitrary and unreasonable and hence constitutes a deprivation of such owner's

property without due process of law and a denial of equal protection of the laws (47 Cal.2d 636-638, 688, 306 P.2d 847-848, 890, AJS 46-49, 145).

5. On the basis of the conclusions summarized above, that the 160 acre water limitation provisions of section 46 of the Omnibus Adjustment Act of 1926 are not applicable to these contracts, it follows that this section 46 is not an "applicable" federal law within the meaning of California Water Code section 23200 which provides that under contracts such as those in question water "shall be distributed and apportioned by the district in accordance with the applicable acts of Congress, the rules and regulations of the Secretary of the Interior thereunder, and the provisions of the contracts" (47 Cal.2d 639, 306 P.2d 849, AJS 51).

3. The Sole Justification for Existence of the Trust in Water of the State Announced by the California Court Is to Invalidate the Limitation.

It should be realized at the outset that despite the sweeping and formidable language which the California Supreme Court majority used to describe the trust (e.g., 47 Cal.2d 627, 306 P.2d 841, AJS 32-33), most of the incidents which one would commonly associate with a trust are carefully whittled away.

Generally, the right is subject to "reasonable terms and conditions" (47 Cal.2d 626, 306 P.2d 841, AJS 31). The beneficiaries may have to organize themselves into "properly classified groups" to be "in a position to demand benefits without discrimination" (47 Cal.2d 627, 306 P.2d 841, AJS 33). Notwithstand-

ing the inchoate right, the right to receive water does not accrue by virtue of an application to appropriate, because an application does not vest a water right as part and parcel of a freehold (47 Cal.2d 688-689, 306 P.2d 890, AJS 146). The trust right does not help get water to one whose land is excluded from a district (47 Cal.2d 691, 306 P.2d 892, AJS 150-151) for a landowner does not have a proportionate ownership in the assets of his district (47 Cal.2d 692-693, 306 P.2d 893, AJS 152). And finally one who physically cannot be served may nevertheless be included in a district and assessed (47 Cal.2d 711-713, 306 P.2d 883-884, AJS 218-221), thus providing another example where the trust right does not insure the receipt of water.

Thus, the sole reason for creation of the trust seems to be to provide a device to invalidate the 160 acre water limitation. But even if one were to accept the existence of the trust it would not render unconstitutional the application of the limitation to delivery of water from a federal reclamation project to privately-owned land.

4. The Effect of Section 8 of the Reclamation Act of 1902 on the Power of the United States to Apply the Limitation and Obtain the Necessary Water Rights.

Consider first the theory that whereas the United States could constitutionally apply the limitation if it were able to acquire "unlimited title" to the water which it intended to deliver, federal law forbids the United States not only (a) from acquiring such title, but also (b) from denying reclamation project water

delivery to the owners of the inchoate beneficial rights (47 Cal.2d 627-628, 639, 306 P.2d 842, 849, AJS 33-35, 51). This theory springs essentially from an erroneous interpretation of section 8 of the Reclamation Act of 1902 (32 Stat. 390, 43 U.S.C. §§ 372, 383). The language of that section relied upon by the majority of the California Supreme Court (47 Cal.2d 627-628, 639, 306 P.2d 842, 849, AJS 33-34, 51) reads:

> "That nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation or any vested right acquired hereunder and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws, . . ."

Citing this court's decision in *U. S. v. Gerlach Live Stock Co.*, 339 U.S. 725 (1950), as authority (47 Cal.2d 628, 639, 306 P.2d 842, 849, AJS 34, 51) the California Supreme Court majority has given a curious construction to this language. It holds that the provision subjects "whatever interest or title the United States has acquired to water by appropriation, assignment or by other means of acquisition" to "the limitations of title herein determined [i.e., to the inchoate beneficial rights of the water users of the State]" (47 Cal.2d 628, 306 P.2d 842, AJS 35) and further that under this provision "state laws remain unaffected by later [federal] enactments" (47 Cal.2d 639, 306 P.2d 849, AJS 51). In effect, the

California Supreme Court's holding is that section 8 compels the United States to give *specific* recognition to water rights established under state law (1) even though this would violate other and later federal enactments; and (2) even though the authority to acquire the rights needed to construct and operate reclamation projects is expressly granted by other statutes (53 Stat. 1197, 43 U.S.C. § 389; 50 Stat. 850; 32 Stat. 389, 390, 43 U.S.C. §§ 373, 421); and (3) even though this court has recognized that some rights for the project have been acquired under the United States' power of eminent domain (*U. S. v. Gerlach Live Stock Co.*, 339 U.S. 725, 739 (1950)).

This construction of section 8 not only patently violates the common-sense canons of statutory interpretation, that the later governs the earlier and that the specific governs the general, but is also contradicted by the authorities. The only case cited by the California Supreme Court is *U. S. v. Gerlach Live Stock Co.*, 339 U.S. 725 (1950). But, on this issue, that case held only that if property rights established under state law are taken by the United States in connection with the building and operation of a federal reclamation project, the owner is entitled to compensation. The *Gerlach* case did not even suggest, nor has any other case before those now being appealed, that section 8 constitutes either: (1) an anticipatory repeal of later federal enactments in favor of the presumed requirements of state law; or (2) a relinquishment of the power to condemn state recognized water rights.

As to the first point, this court in *Nebraska v. Wyoming,* 325 U.S. 589, 615 (1945), construed section 8 quite differently: "We do not suggest that where Congress has provided a system of regulation for federal projects it must give way before an inconsistent state system".

As to the second point, the *Gerlach* case itself involved a taking of water rights established under state law. The taking was necessary because satisfaction of those rights by deliveries would have deprived the Central Valley Project of water needed for its planned operation. In our cases if "unlimited title" in water rights is really required to enable the United States to apply the limitation, the justification for a taking of the outstanding inchoate beneficial rights is even plainer—the necessity to obey an express mandate of federal law. The fact that those rights are described as being held in trust rather than absolutely cannot weaken the power to acquire what is needed (*United States v. Carmack,* 329 U.S. 230, 239 (1946)).

If compensable rights have already been taken, compensation may be had, as in the *Gerlach* case, by a suit for damages under the Tucker Act (28 U.S.C. §§ 1346(a)(2), 1491). But, as pointed out by Chief Justice Gibson dissenting in the *Ivanhoe* case "the problems of compensation are not within the issues of this proceeding" (47 Cal.2d 658, 306 P.2d 861, AJS 79; cf. *Yearsley v. Ross,* 309 U.S. 18, 21 (1940)).

5. The Limitation Does Not Deprive Owners of Excess Land of Any Inchoate Beneficial Water Rights Owned by Them Without Due Process of Law and Does Not Deny Them the Equal Protection of the Laws.

Since the United States is empowered to secure "unlimited title" in the water to be delivered, if such title is necessary to apply the limitation, the predicate on which the California Supreme Court majority rested its conclusion of unconstitutionality of the limitations fails. But even without considering the United States' undoubted power of eminent domain, it is clear the conclusion cannot stand. Analysis reveals plainly that the 160 acre water limitation does not deprive anyone of the inchoate beneficial rights which he may have in the domestic waters of California.

The limitation is a restriction on the service which can be received from federally-financed irrigation works. The water users remain as free as they ever were to perfect whatever property right they may have in the undeveloped waters of the State. Their use and enjoyment of such property right is involved here only because they desire to use and enjoy it through project works financed and constructed by the United States. Whatever the nature of the right they may have by virtue of state law in water as it flows in its natural state, this cannot conceivably give them a property right in the works of the federal government. Any such right must be derived from federal law, which requires the 160 acre water limitation. Therefore, the restrictions on the use of federal project facilities for delivering water to excess land,

imposed by the limitation, do not deprive the owners of any property possessed by them.

Of course, the "excess" landowners hoped to enjoy to the full the increase in values due to the presence of a reclamation project (Taylor, *Destruction of Federal Reclamation Policy? The Ivanhoe Case,* 10 Stanf. L. Rev. 76, 92-96 (1957)). But frustration of a hoped for economic advantage is not synonymous with taking of property *(U. S. v. Willow River Co.,* 324 U.S. 499, 502-503 (1945)). The situation can well be described in the language of this court in *Wickard v. Filburn,* 317 U.S. 111, 133 (1942):

> "That appellee is the worse off for the aggregate of this legislation does not appear; it only appears that, if he could get all that the government gives and do nothing that the government asks, he would be better off than this law allows. To deny him this is not to deny him due process of law."

Nor, in the light of the subsidy involved in project water service, as explained above (pp. 52-54 herein), does the limitation deny equal protection of the laws? Actually there is no problem of discrimination at all. Every water user within the contracting district is treated with equality. Each is entitled to delivery of a surface supply of water from the project for 160 acres of land owned by him.

But even if the limitation is considered as creating a classification, it is a reasonable classification, made for the purpose of preventing the undue concentration of the benefits of the program. The power to

condition equitably the receipt of governmental bounty is inherent in the very power to distribute such bounty in the first place (*Wickard v. Filburn,* 317 U.S. 111, 133 (1942); *Steward Machine Co. v. Davis,* 301 U.S. 548, 584-585 (1937)).

6. Section 46 of the Omnibus Adjustment Act of 1926 Is an "Applicable" and "Relevant" Act of Congress Under California Water Code Sections 23197(a) and 23200.

The California Irrigation District Federal Cooperation Law (California Water Code §§ 23175 et seq.) authorizes irrigation districts to "cooperate and contract with the United States under the Federal Reclamation Act of June 17, 1902, and all acts amendatory thereof or supplementary thereto . . ." (Calif. Wat. Code § 23195) for the purposes, among others, of "a water supply" or "accomplishing any of the purposes of the district" (Calif. Wat. Code § 23196(b), (g)). California Water Code sections 23197(a) and 23200 prescribe the following rules for distribution of the water so provided:

> "23197. In a contract made pursuant to section 23196 a district may include provision for either or both of the following:
>
> "(a) Delivery and distribution of water for the land in the district *under the relevant acts of Congress* and the rules and regulations established thereunder."
>
> * * *
>
> "23200. All water, the right to the use of which is acquired by a district under any contract with the United States shall be distributed and apportioned by the district *in accordance with the*

applicable acts of Congress, the rules and regulations of the Secretary of the Interior thereunder, and the provisions of the contract, and provision may be made in the contract for the refusal of water service to any or all land which may become delinquent in the payment of any assessment levied for the purpose of carrying out the contract." (Emphasis added.)

The power of irrigation districts to cooperate and contract with the United States as set forth in the Irrigation District Federal Cooperation Law is also expressly extended to the Santa Barbara County Water Agency (Santa Barbara County Water Agency Act, § 6, Calif. Stats. 1945, c. 1501, p. 2787).

In the previous discussion, we have shown that the 160 acre water limitation provisions of section 46 of the Omnibus Adjustment Act of 1926 apply to the delivery of water to privately-owned land as a matter of federal law and that they are constitutional. It follows, therefore, that section 46 is one of the "relevant" and "applicable" acts of Congress referred to in California Water Code sections 23197(a) and 23200 as controlling the delivery, distribution and apportionment by the contracting districts of the water made available by their federal contracts.

The opposite holding by the majority of the California court (47 Cal.2d 639, 306 P.2d 849, AJS 51) was based on their conclusion that the limitation cannot constitutionally be applied because the United States cannot acquire an "unlimited title" in the

water. If that conclusion falls, obviously so does the holding derived from it.

It follows also that had the California court reached the right conclusion on the questions of the applicability and constitutionality of the limitation, it would of necessity have changed its holding respecting California Water Code § 22250. Their holding was that the general rule of water apportionment for irrigation districts provided by that code section governs the distribution of water received under federal contracts, i.e., that there are "no pertinent exceptions" to that rule (47 Cal.2d 636, 306 P.2d 847, AJS 46-47). The correct holding, of course, is that California Water Code sections 23197(a) and 23200, providing in effect for apportionment of water in accordance with the 160-acre water limitation, *are* pertinent exceptions to section 22250 in situations where the water is received pursuant to federal contracts. Insofar as the *Santa Barbara* case is concerned, however, Water Code section 22250 is irrelevant in any event. This is because it applies only to irrigation districts and has no equivalent in the law governing the Santa Barbara County Water Agency or any of its member units.

These questions ostensibly involving construction of state laws are actually federal questions because: (1) they relate to the capacity of the United States, the title it can acquire for a federal purpose, and its obligations, if any, under state law; and (2) the state law by its own terms is made dependent on federal law (pp. 33-35, 38-39 herein).

IV. THE PROVISIONS OF THE CONTRACTS RELATING TO WATER DELIVERY AND PAYMENT ARE VALID.

A. These Provisions Conform Literally With Federal Law.

The United States has been constructing and operating projects to irrigate arid and semi-arid western lands since the enactment of the Reclamation Act of 1902. The basic feature established then—delivery of irrigation water from works constructed with Government funds under contracts providing for the recovery from the water users of construction costs without interest over a period of years—has been maintained to this day, although the method of recovering the costs has been changed from time to time, and the portion of the costs recoverable has been decreased.

Originally, the repayment period was 10 years (Reclamation Act of 1902, § 4; 32 Stat. 389, 43 U.S.C. § 461). The period was changed in 1914 to 20 years (Reclamation Extension Act of 1914, §§ 1, 2, 38 Stat. 686, 687, 43 U.S.C. §§ 471, 472, 475); in 1924 to an indefinite period determined by the productive power of the land (Second Deficiency Act of 1924, § 4(F), 43 Stat. 702, 43 U.S.C. §§ 473, 474); and in 1926 to 40 years (Interior Dept. Approp. Act, 1927, 44 Stat. 479; Omnibus Adjustment Act of 1926, §§ 45, 46, 44 Stat. 648-650, 43 U.S.C. §§ 423d, 423e).

Today recovery of irrigation construction costs is governed by sections 9(d) and 9(e) of the Reclamation Project Act of 1939 (53 Stat. 1195, 1196, 43 U.S.C. §§ 485h(d), 485h(e)) as amended by the Act of July 2, 1956 (70 Stat. 483, 43 U.S.C.A. § 485h-1

(1956 supp.)). Section 9(d) provides for a 40-year period of payment by the contracting district of a specific amount of money computed to be its share of the construction cost of the works which serve it; this payment period starts to run after an initial development period of not more than 10 years. Section 9(e) provides an alternative to section 9(d) as follows:

> "In lieu of entering into a repayment contract pursuant to the provisions of subsection (d) of this section to cover that part of the cost of the construction of works connected with water supply and allocated to irrigation, the Secretary, in his discretion, may enter into either short- or long-term contracts to furnish water for irrigation purposes. Each such contract shall be for such period, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, due consideration being given to that part of the cost of construction of works connected with water supply and allocated to irrigation; and shall require payment of said rates each year in advance of delivery of water for said year. In the event such contracts are made for furnishing water for irrigation purposes, the costs of any irrigation water distribution works constructed by the United States in connection with the new project, new division of a project, or supplemental works on a project, shall be covered by a repayment contract entered into pursuant to said subsection (d)."

The key requirements of the type of contract authorized by this statutory provision are as follows:

1. This type of contract may be used *"in lieu"* of a repayment contract pursuant to the provisions of subsection (d) of section 9 to cover that part of the cost of the construction of works connected with water supply and allocated to irrigation.

2. Either short or long term contracts to furnish water for irrigation purposes are authorized.

3. The term of any contract may not exceed forty years.

4. The contracts must provide for rates for the furnishing of water which in the judgment of the Secretary of the Interior will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, due consideration being given to that part of the cost of construction of works connected with water supply and allocated to irrigation. The Department of the Interior has construed this to mean that irrigation construction costs may be recovered by means of 9(e) contracts in any reasonable period within the useful life of the project and need not be recovered within the 40-year term of the initial contract with a district (Opinion of the Solicitor of the Dept. of the Interior (M-35047, May 24, 1948)). This administrative interpretation has been approved by Congress in legislation enacted in 1956 (70 Stat. 483, 43 U.S.C.A. § 485h-1 (1956 supp.)).

5. The contracts must provide for payment of these rates each year in advance of delivery of water for said year.

The provisions relating to irrigation water delivery and payment in the three contracts with the United States in issue in these cases (Ivanhoe contract: Arts. 10-17, R. 17-25; Madera contract; Arts. 3-11, R. 192-202; Santa Barbara Contract: Arts. 10-17, R. 482-493) conform faithfully to the requirements of section 9(e) as listed above. The provisions are in lieu of a general repayment obligation payable in forty years as would otherwise have been required under section 9(d); they undertake to furnish water (e.g., Ivanhoe contract, Art. 11, R. 17-19) for irrigation purposes (e.g., *id.*, Art. 17, R. 25); the term is forty years (e.g., *id.*, Art. 10, R. 17); and the rates for furnishing of water included therein (e.g., *id.*, Art. 13(a), R. 19) are based on the judgment of the Secretary of the Interior that sufficient revenue will be produced to cover an appropriate share of the annual operation and maintenance cost of the particular project and also to return to the federal government in a period greater than 40 years but within the useful life of the project the portion of the project construction cost allocated for repayment by irrigators (Central Valley Project: H.R. Doc. No. 146, 80th Cong., 1st Sess. 5, 9-10, 17-22 (1947); Cachuma Project: H.R. Doc. No. 587, 80th Cong., 2d Sess. 22, 33-34 (1948), S.B. Df. Ex. A, R. 647-648).

The Santa Barbara County Water Agency contract provides for delivery of water for municipal water

supply purposes in addition to irrigation. The contract provisions covering delivery and payment of that supply conform to the requirements of alternative (2) of section 9(c) of the Reclamation Project Act of 1939 (53 Stat. 1195, 43 U.S.C. § 485h(c)). Section 9(c) provides in pertinent part:

> "The Secretary is authorized to enter into contracts to furnish water for municipal water supply or miscellaneous purposes: *Provided,* That any such contract either (1) shall require repayment to the United States, over a period of not to exceed forty years from the year in which water is first delivered for the use of the contracting party, with interest not exceeding the rate of 3½ percentum per annum if the Secretary determines an interest charge to be proper, of an appropriate share as determined by the Secretary of that part of the construction costs allocated by him to municipal water supply or other miscellaneous purposes; or (2) shall be for such period, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, and shall require the payment of said rates each year in advance of delivery of water for said year."

Alternative (1) of section 9(c) resembles section 9(d) in that both provide for a fixed construction cost obligation. Alternative (2) of section 9(c) is analogous to section 9(e) in that both provide for furnishing water at rates designed to cover an appropriate

share of the project's fixed charges, without stating a maximum period for full recovery of construction costs.

B. Analysis of the Objections of the California Court to the Water Delivery and Payment Provisions.

Despite the fact that the water delivery and payment provisions of the three contracts faithfully conform to the requirements of these sections of the law, the majority of the California Supreme Court has concluded that they are invalid.[5] This conclusion was predicated on the following holdings:

1. Applicable federal law requires that a water supply contract between the United States and an irrigation district "specify a specific amount of money, to be repaid by the district in 40 years," as the district's obligation for repayment of the cost of construction of all storage and delivery works serving it, which these contracts do not do (47 Cal.2d 630-631, 639-640, 688, 306 P.2d 843-844, 849-850, 890; AJS 38, 52, 145).

2. The water delivery provisions of the contracts, by implication or otherwise, purport to grant to the United States the right to distribute water to consumers at a price without compliance with the laws of California relating to the regulation and control of public utilities in the distribution of the State's domestic water; this is in conflict with controlling federal

[5]The Court did not discuss the legality of the municipal water supply provisions of the Santa Barbara contract, but inferentially its views on section 9(e) seem to apply equally to section 9(c)(2). Our discussion will similarly be restricted henceforth to section 9(e), but the principles discussed are equally applicable to section 9(c).

law, section 8 of the Reclamation Act of 1902 which requires the United States to comply with such laws of California (47 Cal.2d 641-642, 644, 648, 688, 306 P.2d 851, 852, 854-855, 890; AJS 54-56, 58-59, 64, 145).

3. To the extent that the water delivery provisions of the contract, by implication or otherwise, reserve to the United States the right at its discretion to discontinue water service at the end of the contract term, those provisions are "contrary to well established constitutional principles and protections" (47 Cal.2d 643, 688, 306 P.2d 851, 890, AJS 56, 145).

C. Federal Law Does Not Require That a Water Supply Contract Under Section 9(e) of the Reclamation Project Act of 1939 Contain a Construction Obligation for Repayment by the District in 40 Years.

The majority of the California Supreme Court concluded that:

> ". . . applicable federal law requires that the contract specify a specific amount of money to be repaid by the district by installments, within 40 years; that this is an obligation for repayment of the cost of construction of storage and delivery works, and that the payment by the district be credited against this obligation." (47 Cal.2d 640, 306 P.2d 849-850, AJS 52).

This conclusion is correct only insofar as the contract concerns the recovery of costs expended for construction of a distribution system to distribute water to the district's water users within its boundaries. The last sentence of section 9(e) expressly requires that such cost be covered by a 9(d) type contract. Accordingly, Part B in the Ivanhoe and Madera contracts

establish a total distribution system construction obligation, a repayment period, annual installments and provisions for crediting payments against that obligation (Ivanhoe contract, Art. 19, R. 26-28; Madera contract, Art. 13, R. 203-205).

But the conclusion is clearly not correct with respect to payment for water delivery from "storage and delivery works" common to the entire project when the 9(e) alternative type of contract is used. The plain words of section 9(e), as we have previously noted, show that it differs from section 9(d) in *not* requiring the specification of a specific amount of money for payment in 40 years as the district's obligation for repayment of the cost of construction of the project's main water supply features, and in permitting instead the type of arrangements which the contracts in issue contain.

If there ever was any doubt that section 9(e) authorizes water supply contracts like those in issue in these cases, there can be doubt no longer since the Act of July 2, 1956 (70 Stat. 483, 43 U.S.C.A. § 485h-1 (1956 Supp.)). The purpose and effect of that act were explained in the report by the House Committee on Interior and Insular Affairs on H.R. 101, the bill which was enacted:

"PURPOSE OF THE BILL

"This bill relates to the administration by the Secretary of the Interior of section 9, subsections (d) and (e), of the Reclamation Project Act of 1939. It would alleviate several major objections

that have been directed against the type of contract—sometimes called a 'water service contract' or a 'utility-type contract'—which has been written by virtue of section 9(e) of the Reclamation Project Act of 1939. These objections or complaints are (1) that no assurance can be given in the contract itself or in any other document binding upon the Government that the contract will be renewed upon its expiration; (2) that the water users who have this type of contract are not assured that they will be relieved of payment of construction charges after the Government has recovered its entire irrigation investment; and (3) that the water users are not assured of a 'permanent right' to the use of water under this type of contract.

"EXPLANATION OF THE BILL

"With respect to renewal, this legislation directs the inclusion in any long-term 9(e) type contract—that is, contract the term of which is more than 10 years—of provision for renewal if the contracting organization so requests. Such renewal would take into consideration increases or decreases in construction, operation and maintenance costs, and improvement or deterioration in the contracting party's repayment ability.

"There are two provisions in the bill which assure credit toward repayment and eventual repayment of construction costs. First, the bill directs the Secretary of the Interior to credit each year, toward repayment of construction costs, so much of the amount paid by the contracting organization as is in excess of the operation and maintenance expenses for that year. At such time as the

sum of such credits is equal to the amount established as the organization's appropriate share of the construction cost, then no construction component will thereafter be included in the water charges. Secondly, it provides that a long-term contract entered into under section 9(e) can be converted to a contract under section 9(d) at such time as the amount of the construction costs remaining to be repaid can be repaid within the term of a contract under section 9(d).

"With respect to assurance of permanent water service, the bill provides that any party to any contract entered into pursuant either to section 9(e) or section 9(d) will have first right to a stated share of the project's available water supply during the term of the contract or any renewal thereof. Upon completion of payment of that part of the construction cost assigned for ultimate return by the contracting organization, the right to a stated share of the project's water supply would become permanent." (H.R. Rep. No. 1754, 84th Cong., 2d Sess. 2 (1956).)

The bill was similarly understood by the Senate Committee on Interior and Insular Affairs, which stated in its report (Sen. Rep. No. 2241, 84th Cong., 2d Sess. 2 (1956)):

"The committee concurs fully with the views expressed by the House Committee on Interior and Insular Affairs in Report No. 1754.

"The Senate Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 101) relating to the administration by the Secretary

of the Interior of section 9, subsections (d) and (e), of the Reclamation Project Act of 1939, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

"PURPOSE OF THE BILL

"The bill is directed toward perfecting the basis for the administration by the Secretary of the Interior of subsections (d) and (e) of Section 9 of the Reclamation Project Act of 1939. Its provisions would make it possible for the Secretary of the Interior in approving so-called 'water service' or 'utility type' contracts to meet objections that have heretofore been made to agreements written, under interpretations by the Department, of section 9(e) contracts.

"The three major objections that are met by the bill are (1) that no assurance can be given in the contract itself or in any other document binding upon the Government that the contract will be renewed upon its expiration; (2) that the water users who have this type of contract are not assured that they will be relieved of payment of construction charges after the Government has recovered its entire irrigation investment; and (3) that the water users are not assured of a 'permanent right' to the use of water under this type of contract.

"The so-called water service or utility type contracts as authorized by the Reclamation Project Act of 1939 represented an innovation in reclamation law. For several years, water users' organizations were reluctant to enter into contracts of these types because of the objections cited. How-

ever, in the last 10 years more than 35 9(e) contracts containing its provisions have been approved. Twenty-seven of the contracting organizations are in California with others in the Missouri River Basin project area. Thus, it would appear that the principles of the two sections are generally accepted, but it has been recognized that the contracting organizations were entitled to consideration which the legal advisers of the Department held were not specifically authorized by the 1939 act.

"NO CHANGES IN EXISTING LAW

"'H.R. 101 avoids any amendment to the text of subsections 9(d) and 9(e), but lays down the course to be followed by the Secretary of the Interior in administering the law. . . .'"

The act expressly recognizes that a specific construction obligation for full repayment by the contracting district within 40 years need not be provided in a 9(e) contract. It states that in long-term 9(e) contracts hereafter entered into, if the contracting district so requests, provision shall be included (a) for renewal of the contract under stated terms and conditions which shall provide for changes in the charges to reflect changes in construction, operation and maintenance costs (§ 1(1)), and (b) for conversion of the contract into a 9(d) contract at such time as the remaining amount of construction cost which is properly assignable for ultimate return by the organization can probably be repaid to the United States within the term of a 9(d) contract (§ 1(2)).

The conclusion of the majority of the California Supreme Court that federal law now has, or previous to the enactment of this 1956 Act had, an inflexible requirement that all water delivery contracts provide for repayment of a fixed obligation within 40 years is utterly irreconcilable with the foregoing provisions of the act. In addition, it is significant that the recommendations of the Bureau of the Budget that the bill require the establishment of water rates which would repay the irrigation investment over a period of not more than 50 years (H.R. Rep. No. 1754, 84th Cong., 2d Sess. 6 (1956)) were ignored. The plain implication in the act is thus that there is no fixed maximum period for recovery of irrigation costs.

The act expressly recognizes also that provision for giving credit to the contracting district for the portion of the payments that exceed its share of the project's operation and maintenance cost need not be included as part of the written 9(e) contract, but rather that credit shall henceforth be given simply as a matter of administration of both existing and new 9(e) contracts (§ 1 (3)).

The act requires that the Secretary of the Interior now establish a construction obligation for each contracting district as soon as he can feasibly do so, but there is no requirement that even after this obligation is fixed it be stated in the 9(e) contract (§ 1 (3)). Of course, total construction cost may not be capable of being fixed for many years after water is first available, especially in large and expanding projects which are built over a long period of years. For ex-

ample, the first long-term 9(e) contract for delivery of water for irrigation from the initial units of the Central Valley Project was signed in 1945 (Montgomery and Clawson, *History of Legislation and Policy Formation of the Central Valley Project* 171 (U.S. Dept. of Agric., Bur. of Agric. Econ. 1946), Iv. St. Ex. 9). Since then, the project has been augmented by authorization of the American River Basin Development (63 Stat. 852), the Sacramento Valley Canals (64 Stat. 1036), and the Trinity River Division (69 Stat. 719), none of which has yet been completed.

D. Federal Law Is Not Violated by the Fact That the Water Delivery Provisions of the Contracts May Not Be in Conformance With State Laws and Regulations Concerning the Control of Public Utilities.

The majority of the California court has condemned the water delivery and payment provisions of the contracts as violative of federal law on the ground that they provide for activities "by-passing" state public utility law. The majority declared:

> "The effect of the validation of this contract would be, impliedly at least, to approve a procedure by which the United States as a purveyor of the domestic waters of this state, might continue indefinitely to by-pass the established law of the state and procedures thereunder applicable to water services generally.
>
> "In furnishing its domestic waters to consumers at a price, the activities of the United States under its purported construction of section 9(e) resemble those of a public utility acting in a pro-

> prietary capacity. As above noted, the Reclamation Act of 1902 provided that: 'Nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any state or territory relating to the control, appropriation, use or distribution of water used in irrigation, or any vested right acquired thereunder and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws . . .' It may fairly be said that the foregoing federal statutory provision remains in full force; that it controls the operations of the Department of the Interior so far as federal law is concerned, and that under the controlling state law, the furnishing of water to consumers by a utility must be subject to and be in conformity with certain rules and regulations established by or under the authority of the Constitution and the statutes of the state'' (47 Cal. 2d 642, 306 P.2d 851, AJS 55-56).

Here, again, as in its consideration of the validity of the 160 acre water limitation, the California Court has erroneously construed § 8 of the Reclamation Act of 1902. We find it necessary once again to refer to this Court's statement in *Nebraska v. Wyoming*, 325 U.S. 589, 615 (1945), that where Congress has provided a system of regulation for federal projects, section 8 does not compel that system to give way before an inconsistent state system. Here, as we have shown, in § 9(e) Congress has provided a system for delivering water and recovering irrigation costs. As long as the contracts in issue are consistent with that section, federal law is satisfied, irrespective of the

fact that the contracts may cast the United States in the role of a public utility in a manner deemed contrary to state law regulating public utilities.

It is our position, however, that there is nothing in the contracts or in the law on which they are based, which in fact compels the United States to become a public utility.

First, the Act of July 2, 1956 (70 Stat. 483, 43 U.S.C.A. § 485h-1 (1956 Supp.)) discussed above, sets at rest any doubt as to the repayment objective of 9(e) contracts. Consistent with the prior administrative interpretation of § 9(e) by the Department of the Interior, the Act provides for inclusion in the rates for water delivery of a reasonable construction component (§ 1(6)). When the contracting district's share of the construction obligation has been recovered through payment of these water rates, no further construction component is to be included (§§ 1(3), (6)).

Second, there was no reference or citation of any sort by the California Supreme Court majority to the "established law of the state and procedures thereunder applicable to water services generally," the "certain rules and regulations established by or under the authority of the Constitution and the statutes of the state" (47 Cal.2d 642, 306 P.2d 851, AJS 55-56), or "the laws of the state, both constitutional and statutory, respecting the regulation and control of public utilities in this state" (47 Cal.2d 644, 306 P.2d 852, AJS 59) which the majority feared would be violated by the 9(e) contract. Nor was there any explanation as to just how the 9(e) contract would

violate them. We submit that these omissions were not fortuitous. There simply is not anything in the California Constitution, California statutes, or California court decisions prior to the ones now being appealed, that the California Supreme Court could point to. In such total absence of reason or authority, this conclusion of the California Supreme Court should be rejected as "unsubstantial and illusory" *(Lawrence v. State Tax Comm.*, 286 U.S. 276, 282-283 (1932)).

E. The Water Delivery Provisions of the Contracts Do Not Reserve to the United States the Right Arbitrarily to Discontinue Water Delivery at the End of the Contract Term.

The majority of the California Supreme Court stated that the 9(e) contracts "would be contrary to well-established constitutional principles and protections" if they were construed as reserving to the United States the discretion arbitrarily to discontinue water service at the end of the contract term (47 Cal. 2d 643, 688, 713, 306 P.2d 851, 890, 884, AJS 56, 145, 221). It is our view that this constitutional question was not really involved in these cases and should not have been decided.

First, it should be noted that the California Court avoided a square holding that the contracts *should* be construed as reserving the right of arbitrary discontinuance of water delivery. Thus, what the Court declared to be unconstitutional in this regard is a *possible interpretation of the contracts* rather than the contracts themselves or the law or which they are based. Such a possible interpretation is immaterial to the issues of these cases. It is a cardinal rule of con-

tract interpretation that if a contract is capable of two interpretations, one legal and one illegal, the interpretation which makes it legal will be preferred (3 Williston, *Contracts,* § 620, pp. 1785-6 (Rev'd ed. 1936)). This rule is part of the statute law of California (Calif. Civ. Code §§ 1643, 3541). Having tacitly conceded that the contracts are subject to a construction which would avoid constitutional objections it was improper for the California Supreme Court, even obliquely to have questioned the validity of the contract on this ground. Of course this ambivalent mode of construction of the contracts may be disregarded since it concerns the authority of the United States, a federal question *(S.R.A., Inc. v. Minnesota,* 327 U.S. 558, 564 (1946)). It may be relevant, however, as showing a "palpable evasion" of state law in order to avoid a federal rule (cf. *West Virginia v. Sims,* 341 U.S. 22, 33 (1951) (concurring opinion)).

Second, to the extent that the contracts say anything at all respecting delivery of water after their 40-year terms have expired, they indicate an affirmative intention to continue water service. The Madera contract expressly recognizes that the District has a right, under its 1939 contract selling certain property to the United States for the Central Valley Project (47 Cal.2d 686, 306 P.2d 889, AJS 143), to contract for permanent service from the project by negotiating successive term contracts for water delivery within six months after the termination of the present contract and each succeeding contract (Madera contract, Article 4, R. 192-193). Article 10 of the Santa

Barbara contract contains the following proviso (R. 482): "*Provided*, That in the event the Congress of the United States during the term of the contract enacts legislation permitting the renewal or extension of this contract, the Agency may, at its option, extend or renew this contract in conformance with and subject to the terms of the then existing law". The Ivanhoe contract alone is simply silent on the subject.

At the time these contracts were entered into, section 9(e), the statute which authorized them and limited their term to 40 years, was silent as to what would happen after the expiration of their term. Nor did any other relevant statute require this subject to be covered in this type of contract. In these circumstances, to speculate that water delivery might be arbitrarily discontinued after the contract's end is to go completely outside the basic issue of these cases—the validity of the contracts as they have been written. "To predetermine even in the limited field of water power, the rights of different sovereignties, pregnant with future controversies, is beyond the judicial function. The courts deal with concrete legal issues, presented in actual cases, not abstractions" (*United States v. Appalachian Electric Power Co.*, 311 U.S. 377, 423 (1940)). "The process of constitutional adjudication does not thrive on conjuring up horrible possibilities that never happen in the real world and devising doctrines sufficiently comprehensive in detail to cover the remotest contingency" (*New York v. United States*, 326 U.S. 572, 583 (1946)).

Finally, since enactment of the Act of July 2, 1956, there can no longer be doubt, if ever there really was any, that the districts having long-term 9(e) contracts can be assured of continued water service after their present contracts expire. Under this act, if the other contracting party requests, the Secretary of the Interior must include in 9(e) contracts provision for their renewal (§ 1(1)) and also for their conversion at an appropriate time into 9(d) type contracts (§ 1(2)). In addition the contracting district under a 9(d) or 9(e) contract has a first right (to which the rights of holders of any other type of irrigation water contract are subordinate) to a stated share or quantity of the available project water supply (§ 1(4)). The Secretary of the Interior is expressly authorized to negotiate amendments to existing 9(e) contracts to conform them to the provisions of the Act (§ 2).

Hence, we see that the contracts are valid for what they are—instruments establishing the terms and conditions of water delivery for a stated 40-year period. They do not prescribe what will happen after the 40-year period ends because that subject is not within the scope of their coverage. In any event, federal law has been amended since these contracts were entered into to afford statutory assurance of continued water service upon terms and conditions mutually satisfactory to the federal government and the contracting district. As a result, possible constitutional objections to the right of the United States to discontinue water delivery against the will of the water users are academic and irrelevant.

V. THE PROVISION OF THE CONTRACTS RESPECTING TITLE TO WORKS IS VALID.

The Ivanhoe and Madera contracts each contain the following provision reserving title to all project works in the United States until otherwise provided by Congress (Ivanhoe contract: Art. 33, R. 36; Madera contract: Art. 27, R. 212):

> "Title to all of the Project works, including the distribution system constructed by the United States pursuant to this contract, shall be and remain in the name of the United States until otherwise provided for by the Congress, notwithstanding the transfer hereafter of any of such works to the District for operation and maintenance."

There is no such provision in the Santa Barbara contracts, master or member unit, which are contracts for water service only. The provision, however, does appear in the Goleta, Summerland and Carpenteria distribution system contracts which have been validated by final judgments not appealed.

The majority of the California Supreme Court has held that this provision of the contracts is invalid as a matter of federal law on the basis of the following reasoning:

1. Under federal law, the relationship between the contracting district and the United States is one of "debtor and creditor" (47 Cal.2d 631, 639-640, 648, 306 P.2d 844, 849, 854, AJS 39, 52, 63).

2. One of the incidents of this debtor-creditor relationship is that upon repayment "the district would

succeed to whatever title to lands, structures or works acquired by the United States within the district in aid of its activities on behalf of the district and the landowners within the district, in like manner and to the same extent as an ordinary debtor is entitled to satisfaction of record evidencing the payment of his indebtedness" (47 Cal.2d 631, 306 P.2d 844, AJS 39).

3. Conversely, "the right and obligation of the United States would seem to be to hold the property thus acquired by it in its own name only until final repayment is made, with the right of the district to a conveyance thereof not dependent on a future and necessarily discretionary act of Congress" (47 Cal.2d 631, 306 P.2d 844, AJS 39-40).

4. Since the contract provision quoted above provides for retention of title by the United States until Congress provides otherwise, "obviously such a provision in the agreement is contrary to the debtor-creditor relationship existing between the United States and the district" (47 Cal.2d 631, 306 P.2d 844, AJS 39).

The key determination in the foregoing line of reasoning is that one of the incidents of the "debtor-creditor" relationship established by federal law is the right of the debtor, the contracting district, to a conveyance of title to the facilities serving it after it has paid its share of the construction costs. However, the California Supreme Court majority failed to cite any federal statute, regulation, or court decision where this is provided. The reason is that there is none. The

only statute of which we are aware that does mention the subject of title to project works (section 6 of the Reclamation Act of 1902 (32 Stat. 389, 43 U.S.C. § 498)), supports rather than contradicts the provision in the contracts that Congressional action is required to transfer title. As stated by Chief Justice Gibson of the California Supreme Court, dissenting in *Ivanhoe* (47 Cal.2d 662, 306 P.2d 864, AJS 85-86):

> "There is no reason why the parties cannot agree that title to the project works shall remain in the United States after repayment of construction costs. The provision is a reasonable method of assuring that the various properties of the project shall remain devoted to the purposes for which the federal funds were expended, and, in the absence of a showing that the provision violates the Constitution, or a statute or some rule of policy, we should not hold it to be invalid. There is nothing in the contract or in the reclamation law which precludes Congress from transferring title to project property to the district after all terms of the contract are performed, and it will be up to the district to press its claim thereto at such a time."

In recognition of the fact that federal law does not now authorize the transfer of title to federal irrigation works to the water users, bills have been introduced in the last two sessions of Congress to permit transfers under certain conditions.

In the 84th Congress, S. 2217 was passed by the Senate on July 2, 1956, but was not acted upon by the House of Representatives prior to the termination

of that Congress. In its favorable report on the bill, the Senate Committee on Interior and Insular Affairs explained it as follows (S.Rep. No. 2379, 84th Cong., 2d Sess. 2 (1956)):

> "S.2217 proposes to authorize the Secretary of the Interior to transfer title to distribution systems of Federal reclamation projects under certain circumstances to local water users' organizations upon two conditions: (a) that an organization representing the water users concerned shall have requested the transfer; and (b) that the Secretary shall find that the water users or the organization have completed repayment of all construction and other charges, with the exception of operation and maintenance charges not yet due, which are obligations with respect to the distribution system concerned. *Under existing Reclamation law, no provision is made for the transfer of title to distribution works upon completion of repayment from the United States to any organization.*
>
> "Where two or more water-user organizations are concerned with a distribution system the transfer may be effected by the Secretary on the joint application of the organizations affected.
>
> "The bill avoids any reference to the transfer of dams or other supply works as distinguished from irrigation distribution systems. The reason for this omission is that the question of transfer of dams or headworks involves considerations of national policy, as well as interstate considerations and should be taken up in connection with matters of broad national policy affecting water resources and their use." (Emphasis added).

In the first session of the 85th Congress on May 16, 1957, an identical bill, S. 413, was again passed by the Senate. It is now pending before the House of Representatives for consideration during the second session. A similar explanation of this bill was given by the Senate Committee on Interior and Insular Affairs in its favorable report thereon (S. Rep. No. 291, 85th Cong., 1st Sess. 2 (1957)).

Thus it is clear that while there may be persuasive reasons for transferring title of irrigation works from the federal government to the water users when they have completed payment of their construction obligation, transfer is a policy matter demanding Congressional action. Although Congress is now considering a change in present law, that change has not yet been made. The challenged provision of the contracts is, hence, merely a restatement of what federal law requires in any event.

CONCLUSION.

For the reasons stated it is respectfully submitted that the judgments of the Supreme Court of California should be reversed.

Dated: February 26, 1958.

Respectfully submitted,

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(Appendices Follow.)

APPENDICES

Appendix A

RECLAMATION ACT OF 1902
(32 Stat. 388).

Sec. 5 (32 Stat. 389, 43 U.S.C. sec. 431):

. . . No right to the use of water for land in private ownership shall be sold for a tract exceeding 160 acres to any one landowner, and no such sale shall be made to any landowner unless he be an actual bona fide resident on such land, or occupant thereof residing in the neighborhood of said land, and no such right shall permanently attach until all payments therefor are made.

Sec. 6 (32 Stat. 689, 43 U.S.C. secs. 491, 498):

That the Secretary of the Interior is hereby authorized and directed to use the reclamation fund for the operation and maintenance of all reservoirs and irrigation works constructed under the provisions of this act: *Provided,* That when the payments required by this act are made for the major portion of the lands irrigated from the waters of any of the works herein provided for, then the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby, to be maintained at their expense under such form of organization and under such rules and regulations as may be acceptable to the Secretary of the Interior: *Provided,* That the title to and the management and operation of the

reservoirs and the works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress.

Sec. 8 (32 Stat. 390, 43 U.S.C. secs. 372, 383):

That nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: *Provided,* That the right to the use of water acquired under the provisions of this act shall be appurtenant to the land irrigated and beneficial use shall be the basis, the measure, and the limit of the right.

Appendix B

OMNIBUS ADJUSTMENT ACT OF 1926 (44 Stat. 636).

Sec. 46 (44 Stat. 649, 43 U.S.C. sec. 423e):

No water shall be delivered upon the completion of any new project or new division of a project until a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or irrigation districts organized under State law providing for payment by the district or districts of the cost of constructing, operating, and maintaining the works during the time they are in control of the United States, such cost of constructing to be repaid within such terms of years as the Secretary may find to be necessary, in any event not more than forty years from the date of public notice hereinafter referred to and the execution of said contract or contracts shall have been confirmed by a decree of a court of competent jurisdiction. Prior to or in connection with the settlement and development of each of these projects, the Secretary of the Interior is authorized in his discretion to enter into agreement with the proper authorities of the State or States wherein said projects or divisions are located whereby such State or States shall cooperate with the United States in promoting the settlement of the projects or divisions after completion and in the securing and selecting of settlers. Such contract or contracts with irrigation districts hereinbefore referred to shall further provide that all irrigable land

held in private ownership by any one owner in excess of one hundred and sixty irrigable acres shall be appraised in a manner to be prescribed by the Secretary of the Interior and the sale prices thereof fixed by the Secretary on the basis of its actual bona fide value at the date of appraisal without reference to the proposed construction of the irrigation works; and that no such excess lands so held shall receive water from any project or division if the owners thereof shall refuse to execute valid recordable contracts for the sale of such lands under terms and conditions satisfactory to the Secretary of the Interior and at prices not to exceed those fixed by the Secretary of the Interior; and that until one-half the construction charges against said lands shall have been fully paid no sale of any such lands shall carry the right to receive water unless and until the purchase price involved in such sale is approved by the Secretary of the Interior and that upon proof of fraudulent representation as to the true consideration involved in such sales the Secretary of the Interior is authorized to cancel the water right attaching to the land involved in such fraudulent sales: *Provided further,* That the operation and maintenance charges on account of lands in said projects and divisions shall be paid annually in advance not later than March 1. It shall be the duty of the Secretary of the Interior to give public notice when water is actually available, and the operation and maintenance charges payable to the United States for the first year after such public notice shall be transferred to and paid as a part of the construction payment.

Appendix C

ACT OF AUGUST 26, 1937
(50 Stat. 844).

Sec. 2 (50 Stat. 850):

That the $12,000,000 recommended for expenditure for a part of the Central Valley project, California, in accordance with the plans set forth in Rivers and Harbors Committee Document Numbered 35, Seventy-third Congress, and adopted and authorized by the provisions of section 1 of the Act of August 30, 1935 (49 Stat. 1028, at 1038), entitled "An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," shall, when appropriated, be available for expenditure in accordance with the said plans by the Secretary of the Interior instead of the Secretary of War: *Provided*, That the transfer of authority from the Secretary of War to the Secretary of the Interior shall not render the expenditure of this fund reimbursable under the reclamation law: *Provided further*, That the entire Central Valley project, California, heretofore authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115) and the First Deficiency Appropriation Act, fiscal year 1936 (49 Stat. 1622), is hereby reauthorized and declared to be for the purposes of improving navigation, regulating the flow of the San Joaquin River and the Sacramento River, controlling floods, providing for storage and for the delivery of the stored waters thereof, for the reclamation of arid

and semi-arid lands and lands of Indian reservations, and other beneficial uses, and for the generation and sale of electric energy as a means of financially aiding and assisting such undertakings and in order to permit the full utilization of the works constructed to accomplish the aforesaid purposes: *Provided further*, That, except as herein otherwise specifically provided, the provisions of the reclamation law, as amended, shall govern the repayment of expenditures and the construction, operation, and maintenance of the dams, canals, power plants, pumping plants, transmission lines, and incidental works deemed necessary to said entire project, and the Secretary of the Interior may enter into repayment contracts, and other necessary contracts, with State agencies, authorities, associations, persons, and corporations, either public or private, including all agencies with which contracts are authorized under the reclamation law, and may acquire by proceedings in eminent domain, or otherwise, all lands, rights-of-way, water rights, and other property necessary for said purposes: *And provided further*, That the said dam and reservoirs shall be used, first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses; and, third, for power.

Appendix D

RECLAMATION PROJECT ACT OF 1939
(53 Stat. 1187).

Sec. 9(c) (53 Stat. 1195, 43 U.S.C. sec. 485h(c)):

The Secretary is authorized to enter into contracts to furnish water for municipal water supply or miscellaneous purposes: *Provided,* That any such contract either (1) shall require repayment to the United States, over a period of not to exceed forty years from the year in which water is first delivered for the use of the contracting party, with interest not exceeding the rate of 3½ percentum per annum if the Secretary determines an interest charge to be proper, of an appropriate share as determined by the Secretary of that part of the construction costs allocated by him to municipal water supply or other miscellaneous purposes; or (2) shall be for such periods, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, and shall require the payment of said rates each year in advance of delivery of water for said year. Any sale of electric power or lease of power privileges, made by the Secretary in connection with the operation of any project or division of a project, shall be for such periods, not to exceed forty years, and at such rates as in his judgment will produce power revenues at least sufficient to cover an appropriate share of the

annual operation and maintenance cost, interest on an appropriate share of the construction investment at not less than 3 percentum per annum, and such other fixed charges as the Secretary deems proper: *Provided further*, That in said sales or leases preference shall be given to municipalities and other public corporations or agencies; and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 and any amendments thereof. Nothing in this subsection shall be applicable to provisions in existing contracts, made pursuant to law, for the use of power and miscellaneous revenues of a project for the benefit of users of water from such project. The provisions of this subsection respecting the terms of sales of electric power and leases of power privileges shall be in addition and alternative to any authority in existing laws relating to particular projects. No contract relating to municipal water supply or miscellaneous purposes, or to electric power or power privileges shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes.

Sec. 9(d) (53 Stat. 1195, 43 U.S.C. sec. 485h(d)):

No water may be delivered for irrigation of lands in connection with any new project, new division of a project, or supplemental works on a project until an organization, satisfactory in form and powers to the Secretary, has entered into a repayment contract with the United States, in a form satisfactory to the Secretary, providing among other things—

(1) That the Secretary may fix a development period for each irrigation block, if any, of not to exceed ten years from and including the first calendar year in which water is delivered for the lands in said block; and that during the development period water shall be delivered to the lands in the irrigation block involved at a charge per annum per acre-foot, or other charge, to be fixed by the Secretary each year and to be paid in advance of delivery of water: *Provided*, That where the lands included in an irrigation block are for the most part lands owned by the United States, the Secretary, prior to execution of a repayment contract, may fix a development period, but in such case execution of such a contract shall be a condition precedent to delivery of water after the close of the development period. After the close of the development period, any such charges collected and which the Secretary determines to be in excess of the cost of the operation and maintenance during the development period shall be credited to the construction cost of the project in the manner determined by the Secretary.

(2) That the part of the construction costs allocated by the Secretary to irrigation shall be included in a general repayment obligation of the organization; and that the organization may vary its distribution of construction charges in a manner that takes into account the productivity of the various classes of lands and the benefits accruing to the lands by reason of the construction: *Provided*, That no distribution of construction charges over the lands included in the or-

ganization shall in any manner be deemed to relieve the organization or any party or any land therein of the organization's general obligation to the United States.

(3) That the general repayment obligation of the organization shall be spread in annual installments, of the number and amounts fixed by the Secretary, over a period not exceeding forty years, exclusive of any development period fixed under subsection (d) (1) of this section, for any project contract unit, or for any irrigation block, if the project contract unit be divided into two or more irrigation blocks.

(4) That the first annual installment for any project contract unit, or for any irrigation block, as the case may be, shall accrue, on the date fixed by the Secretary, in the year after the last year of the development period or, if there be no development period, in the calendar year after the Secretary announces that the construction contemplated in the repayment contract is substantially completed or is advanced to a point where delivery of water can be made to substantially all of the lands in said unit or block to be irrigated; and if there be no development period fixed, that prior to and including the year in which the Secretary makes said announcement water shall be delivered only on the toll charge basis hereinbefore provided for development period.

(5) Either (A) that each year the installment of the organization's repayment obligation scheduled for such year shall be the construction charges due and payable by the organization for such year; or (B)

that each year the installment for such year of the organization's repayment obligation shall be increased or decreased on the basis of the normal and percentages plan provided in section 4 of this Act for modification of existing obligations to pay construction charges, and the amount of the annual installment of the organization's obligation, as thus increased or decreased, shall be the construction charges due and payable for such year. Under (B) of this subsection the provisions of section 4 of this Act shall be applicable, as near as may be, to the repayment contract made in connection with the new project, new division of a project or supplemental works on a project; and the organization shall make payments on the basis therein provided until its general repayment obligation has become due and payable to the United States in full.

Sec. 9(e) (53 Stat. 1196, 43 U.S.C. sec. 485h(e)):

In lieu of entering into a repayment contract pursuant to the provisions of subsection (d) of this section to cover that part of the cost of the construction of works connected with water supply and allocated to irrigation, the Secretary, in his discretion, may enter into either short- or long-term contracts to furnish water for irrigation purposes. Each such contract shall be for such period, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, due consideration being given to that part of the cost of construc-

tion of works connected with water supply and allocated to irrigation; and shall require payment of said rates each year in advance of delivery of water for said year. In the event such contracts are made for furnishing water for irrigation purposes, the costs of any irrigation water distribution works constructed by the United States in connection with the new project, new division of a project, or supplemental works on a project, shall be covered by a repayment contract entered into pursuant to said subsection (d).

Appendix E

ACT OF JULY 2, 1956

(70 Stat. 483, 43 U. S. C. A. sec. 485h-1 (1956 Supp.)).

Sec. 1:

In administering section 9, subsections (d) and (e) of the Reclamation Project Act of 1939 (53 Stat. 1187, 1195), the Secretary of the Interior shall—

(1) include in any long-term contract hereafter entered into under said subsection (e) provision, if the other contracting party so requests, for renewal thereof under stated terms and conditions mutually agreeable to the parties. Such terms and conditions shall provide for an increase or decrease in the charges set forth in the contract to reflect, among other things, increases or decreases in construction, operation, and maintenance costs and improvement or deterioration in the party's repayment capacity. Any right of renewal shall be exercised within such reasonable time prior to the expiration of the contract as the parties shall have agreed upon and set forth therein;

(2) include in any long-term contract hereafter entered into under said subsection (e) with a contracting organization provision, if the organization so requests, for conversion of said contract, under stated terms and conditions mutually agreeable to the parties, to a contract under subsection (d) at such time as, account being taken of the amount credited to return by the organization as hereinafter provided,

the remaining amount of construction cost which is properly assignable for ultimate return by it can probably be repaid to the United States within the term of a contract under said subsection (d);

(3) credit each year to every party which has entered into or which shall enter into a long-term contract pursuant to said subsection (e) so much of the amount paid by said party on or before the due date as is in excess of the share of the operation and maintenance costs of the project which the Secretary finds is properly chargeable to that party. Credit for payments heretofore made under any such contract shall be established by the Secretary as soon after the enactment of this Act as it is feasible for him to do so. After the sum of such credits is equal to the amount which would have been for repayment by the party if a repayment contract under subsection (d) had been entered into, which amount shall be established by the Secretary upon completion of the project concerned or as far in advance thereof as is feasible, no construction component shall be included in any charges made for the furnishing of water to the contracting party and any charges theretofore fixed by contract or otherwise shall be reduced accordingly;

(4) provide that the other party to any contract entered into pursuant to said subsection (d) or to any long-term contract entered into pursuant to said subsection (e) shall, during the term of the contract and of any renewal thereof and subject to fulfillment of all obligations thereunder, have a first right (to which right the rights of the holders of any other type of ir-

rigation water contract shall be subordinate) to a stated share or quantity of the project's available water supply for beneficial use on the irrigable lands within the boundaries of, or owned by, the party and a permanent right to such share or quantity upon completion of payment of the amount assigned for ultimate return by the party subject to payment of an appropriate share of such costs, if any, as may thereafter be incurred by the United States in its operation and maintenance of the project works; and

(5) provide for payment of rates under any contract entered into pursuant to said subsection (e) in advance of delivery of water on an annual or semiannual basis as specified in the contract.

(6) include a reasonable construction component in the rates set out in any long-term contract hereafter entered into under said subsection (e) prior to amortization of that part of the cost of constructing the project which is assigned to be repaid by the contracting party..

Sec. 2:

The Secretary is hereby authorized to negotiate amendments to existing contracts entered into pursuant to section 9, subsection (e), of the Reclamation Project Act of 1939 to conform said contracts to the provisions of this Act.

Sec. 3:

As used in this Act, the term "long-term contract" shall mean any contract the term of which is more than ten years.

Sec. 4:

Nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary in carrying out the provisions of this Act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: *Provided*, That the right to the use of water acquired under the provisions of this Act shall be appurtenant to the land irrigated and beneficial use shall be the basis, the measure, and the limit of the right.

Sec. 5:

This Act shall be a supplement to the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto).

Appendix F

CALIFORNIA IRRIGATION DISTRICT FEDERAL COOPERATION LAW (California Water Code, Division 11, Part 6, Chapter 2).

Sec. 23175:

This chapter shall be known and may be cited as the Irrigation District Federal Cooperation Law.

Sec. 23176:

[Application of provisions.] The provisions of this chapter apply only to proceedings taken under it and do not apply to district operations unrelated to cooperation with the United States.

[Other provisions of division unaffected.] Except as required expressly or by necessary implication by this chapter all other provisions of this division are unaffected by this chapter.

Sec. 23177:

The definitions in Chapter 2 of Part 1 of this division are applicable to this chapter.

Sec. 23178:

The provisions of Article 4 of Chapter 2 of Part 5 of this division do not apply in case of any contract between a district and the United States.

Sec. 23179:

The board shall perform all acts necessary to carry out the enlarged powers enumerated in this chapter.

Sec. 23195:

Districts may cooperate and contract with the United States under the Federal Reclamation Act of June 17, 1902, and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting cooperation.

Sec. 23196:

The cooperation and contract may be for any or all of the following purposes:

(a) Acquisition, extension, or operation of works for irrigation or drainage or development and distribution of electric power or any or all of these purposes.

(b) A water supply.

(c) Assumption as principal or guarantor of indebtedness to the United States on account of district land.

(d) Borrowing or procuring money from the United States to finance any of the operations of the district.

(e) Financing or refinancing obligations of the district, including outstanding warrants or other indebtedness.

(f) Purchasing or refunding bonds of the district.

(g) Accomplishing any of the purposes of the district.

Sec. 23197:

In a contract made pursuant to Section 23196 a district may include provision for either or both of the following:

(a) Delivery and distribution of water for the land in the district under the relevant acts of Congress and the rules and regulations established thereunder.

(b) Conveyance to the United States as partial consideration for the privileges obtained by the district under the contract of any property of the district.

Sec. 23200:

All water, the right to the use of which is acquired by a district under any contract with the United States shall be distributed and apportioned by the district in accordance with the applicable acts of Congress, the rules and regulations of the Secretary of the Interior thereunder, and the provisions of the contract, and provision may be made in the contract for the refusal of water service to any or all land which may become delinquent in the payment of any assessment levied for the purpose of carrying out the contract.

Sec. 23225:

A district may submit any contract or proposed contract and bond issue to the superior court of the county in which is situated the office of the board to

determine the validity thereof, the authority of the district to make the contract, and the authority for and validity of the issuance and deposit or transfer of the bonds. The validation proceedings shall be had as in the ordinary case of the judicial determination of the validity of district bonds and with like effect.

Appendix G

SANTA BARBARA COUNTY WATER AGENCY ACT

(Calif. Stats. 1945, ch. 1501, p. 2780, as amended by Calif. Stats. 1949, ch. 12, p. 24, 1 Deering's Calif. Water Code Ann., Act 7303 (1954), West Calif. Water Code App. §§51-6, 51-6.3, and 51-11.10).

Sec. 6:

The agency shall have the power to cooperate and contract with the United States under the Federal Reclamation Act of June 17, 1902 and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting cooperation or contract for the purposes of construction of works, whether for irrigation, drainage, or flood control, or for the acquisition, purchase, extension, operation or maintenance of such works, or for a water supply for any purposes, or for the assumption as principal or guarantor of indebtedness to the United States, or for carrying out any of the purposes of the agency, and to carry out and perform the terms of any contract so made; and for said purposes the agency shall have in addition to the powers specifically set forth in this act, all powers, rights and privileges possessed by irrigation districts as set out in Chapter 2 of Part 6 of Division 11 of the Water Code, not inconsistent with the provisions of this act.

Sec. 6.3:

The agency shall have the power to cooperate, act in conjunction and contract with the United States, State

of California, municipalities, and public districts of any kind, in the purchase and sale of water, in the acquisition of water or a water supply, in the construction of any works for the controlling of flood or storm waters in the agency, or for the protection of property, watersheds, watercourses, highways and life, or for the purposes of conserving and transporting said waters for beneficial use, and for the use, operation, management and ownership of such works. The agency also may make and perform any agreement with the United States, the State, any county, municipality, district of any kind, public corporation, any person or any number of them for the joint acquisition, disposition, or operation of any property or works or water or water supply of a kind which might be acquired, disposed of, or operated by the agency.

Any county water district, water conservation district, municipality, flood control district, and any other district or political subdivision of the State empowered by law to appropriate water and deliver water to users shall have the power: (a) To cooperate, act in conjunction and enter into contracts with the agency for all the purposes for which the agency is empowered to cooperate, act in conjunction and contract with such districts, municipalities, and political subdivisions; (b) and to carry out the terms of such contracts.

Sec. 11.10:

The agency may bring at any time after the authorization of bonds or the levy of any special assessment

or after the execution of any contract an action in the Superior Court of the State of California in and for the County of Santa Barbara to determine the validity of the bonds or of the levy or of the contract. The action is in rem. Jurisdiction of all parties interested may be had by publication of summons for at least once a week for three weeks in a newspaper of general circulation published in the agency and designated by the court in which the proceedings are pending. Jurisdiction is complete 10 days after the completion of the publication of summons. Before the expiration of the 30 days after jurisdiction is acquired any person interested may appear and contest the validity of the bonds or assessment or the contract. If no proceedings have been brought by the agency pursuant to this section, any agency assessment [sic] or taxpayer may at any time within 30 days after the levy of any assessment or authorization of any bonds or execution of such contract bring an action in the said superior court to determine the validity of the assessment or bonds or contract. The agency shall be a defendant. If more than one action is pending at the same time concerning similar contests provided for in this section, they shall be consolidated and tried together. The rules of pleading and practice not inconsistent with the provisions of this section are applicable to all actions or proceedings provided for by this section. In a contest provided for by this section, the court shall disregard any irregularity or omission which does not affect the substantial rights of the parties. The judgment shall declare the bonds or levy or contract either valid or

invalid. The costs of any hearing or contest may be allowed and apportioned between the parties or taxed to the losing party in the discretion of the court. Any party may appeal at any time within 30 days after the entry of the judgment. No contest of any thing or matter herein provided shall be made other than in the time and manner in this section provided. In any such action all findings of factor conclusions of the board upon all matters shall be conclusive unless the action was instituted within six months after the finding or conclusion was made.

Appendix H

CALIFORNIA WATER CODE SECTION 22250.

All water distributed by districts for irrigation purposes shall except when otherwise provided in this article be apportioned ratably to each landowner upon the basis of the ratio which the last assessment against his land for district purposes bears to the whole sum assessed in the district for district purposes.

Appendix I

CALIFORNIA WATER CODE, DIVISION 11, PART 5, CHAPTER 4

Article 2. Validation of Bonds and Assessments.

22670. A district may at any time after the authorization of any bonds or the levy of any assessment bring an action in the superior court of the office county to determine the validity of the bonds or of the levy.

22671. The action is in rem.

22672. Jurisdiction of all parties interested may be had by publication of summons for at least once a week for three weeks in a newspaper of general circulation published in the county where the action is pending and designated by the court in which the proceedings are pending.

22673. Jurisdiction is complete 10 days after the completion of publication of summons.

22674. Anyone interested may before the expiration of the 10 days appear and contest the validity of the bonds or assessments.

22675. If no proceedings have been brought by the district pursuant to this article, any district assessment payer may at any time within 30 days after the levy of any assessment or authorization of any bonds bring an action in the superior court of the office county to determine the validity of the assessment or bonds. The district shall be a defendant.

22676. If more than one action is pending at the same time concerning similar contests provided for in this article, they shall be consolidated and tried together.

22677. The rules of pleading and practice in the Code of Civil Procedure not inconsistent with the provisions of this article are applicable to all actions or proceedings provided for by this article.

22678. In a contest provided for by this article the court shall disregard any irregularity or omission which does not affect the substantial rights of the parties.

22679. The action shall be speedily tried.

22680. The judgment shall declare the bonds or levy either valid or invalid.

22681. When a district has exchanged bonds or has agreed to exchange bonds for any interest in property the court in any proceeding brought by a district pursuant to this article shall by its decree determine both:

(a) The validity of all bonds issued or to be issued under any contract or contracts for the exchange of bonds for property interests.

(b) Whether or not the bonds when delivered to the person entitled to them under the terms of the contract will or do constitute valid obligations of the district as against all persons.

22682. The motion for a new trial of any action or proceeding provided by this article shall be heard and determined within 10 days from the filing of the notice of intention.

22683. The costs of any hearing or contest provided for in this article may be allowed and apportioned between the parties or taxed to the losing party in the discretion of the court.

22684. Any party may appeal at any time within 30 days after the rendition of the judgment. The appeal shall be heard and determined within three months from the taking of the appeal.

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In the Supreme Court

OF THE

United States

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Nos. 122, 123, 124, 125

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Appeals from the Supreme Court of California.

APPELLANTS' REPLY BRIEF.

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Subject Index

Page

Additional statutes involved 2

Summary of argument 2

I. This court should entertain jurisdiction because none of the judgments rest on non-federal grounds adequate to support them 4

II. Federal law does not require the United States to violate federal law 6

III. Congress has constitutional power to require the acreage limitation under the general welfare clause 6

IV. The acreage limitation does not take property without due process or deny equal protection 8

Argument 9

I. This court should entertain jurisdiction because none of the judgments rest on non-federal grounds adequate to support them 9

A. The California court held the districts had capacity to contract with the United States. This eliminates the state ground relied on 12

B. The California court held, and acted on its holding, that the contracts are bad because the United States needs, but cannot acquire, an "unlimited title" to the water to be purveyed in order to apply the acreage limitation 13

C. If the United States can acquire the title needed for project purposes the same judgment would necessarily not be rendered below for title would then be irrelevant and the California court so states 18

D. The non-federal grounds on which the appellees rely are dependent on and interwoven with the federal grounds and so are inadequate to support the judgments 19

1. California Water Code section 22250 is applicable only if the United States needs, but cannot acquire, an unlimited title 20

Page

2. If the United States has or can acquire the title needed to apply the acreage limitation, the trust status of a California irrigation district is immaterial 21

3. The California court's reference to the Second Validating Act of 1949 does not demonstrate reliance on state grounds 23

4. The debtor-creditor relationship is based on federal law 25

5. The testing of a federal statute by a state constitution presents a federal question 26

E. Interpretation of California Water Code Section 23200 presents a federal question and no substantial non-federal question 28

F. The Santa Barbara case shows that federal grounds were relied on to the exclusion of state grounds 33

II. Federal law does not require the United States to violate federal law 37

A. The acquisition of water rights must be distinguished from the operation of projects 38

B. Section 8 does not require that other federal laws be ignored 40

C. Even the broadest interpretation of section 8 does not support the judgments below 44

D. The California court's interpretation of section 8 would subject reclamation law to repeal by state action 49

III. Congress has constitutional power to require the acreage limitation under the general welfare clause 51

IV. The acreage limitation does not take property without due process or deny equal protection 55

Conclusion 62

Appendix

Santa Barbara County Water Agency Act 63

Table of Authorities Cited

Cases*

	Pages
Abie State Bank v. Bryan: 282 U.S. 765 (1931)	5, 10
Antle v. Tuchbreiter: 414 Ill. 571, 111 N.E.2d 836 (1953)	11 n. 2
Berman v. Parker: 348 U.S. 26 (1954)	54
Chapman v. Los Angeles: 26 Cal.App.2d 186, 79 P.2d 128 (1938)	9, 59
Clearfield Trust Co. v. United States: 318 U.S. 363 (1943)	11
Cleveland v. United States: 323 U.S. 329 (1945)	54
Clough v. Compton-Delevan Irr. Dist.: 12 Cal.2d 385, 85 P. 2d 126 (1938)	21, 22
District of Columbia v. Thompson: 281 U.S. 25 (1930)	59
East Bay etc. Water Bonds of 1925, In re: 196 Cal. 725, 239 Pac. 38 (1925)	24 n. 5
Flournoy v. Wiener: 321 U.S. 253 (1944)	10
Grayson v. Harris: 267 U.S. 352 (1925)	10, 19
Ickes v. Fox: 300 U.S. 82 (1937)	43

*The abbreviation AJS refers to the Appendices to the Jurisdictional Statement. The Ivanhoe, Madera, Albonico and Santa Barbara opinions of the California Supreme Court have not been reprinted in the Record (R. iii, iv, v), but are reprinted in the Appendices to the Jurisdictional Statement.

			Pages
Ivanhoe Irr. Dist. v. All Parties:			
47 Cal.2d 613,	306 P.2d 833,	AJS 12	14
47 Cal.2d 618-619,	306 P.2d 836-837,	AJS 19-21	14
47 Cal.2d 619,	306 P.2d 837,	AJS 21-22	14, 25
47 Cal.2d 620,	306 P.2d 837,	AJS 22	13-14, 18, 20, 23
47 Cal.2d 620,	306 P.2d 837,	AJS 23	14
47 Cal.2d 622-623,	306 P.2d 838-839,	AJS 25-27	35
47 Cal.2d 622-623,	306 P.2d 838-839,	AJS 26-27	27
47 Cal.2d 623-624,	306 P.2d 839,	AJS 27-28	44-45
47 Cal.2d 624-625,	306 P.2d 840,	AJS 29	21
47 Cal.2d 624-629,	306 P.2d 840-842,	AJS 29-35	23
47 Cal.2d 626,	306 P.2d 841,	AJS 32	25
47 Cal.2d 628,	306 P.2d 842,	AJS 35	14, 15, 44
47 Cal.2d 629,	306 P.2d 843,	AJS 36	12
47 Cal.2d 629,	306 P.2d 843,	AJS 36-37	26
47 Cal.2d 630,	306 P.2d 843,	AJS 37-38	13
47 Cal.2d 631,	306 P.2d 844,	AJS 39-40	20
47 Cal.2d 636,	306 P.2d 847,	AJS 46	20
47 Cal.2d 636-637,	306 P.2d 847-848,	AJS 47-49	27
47 Cal.2d 636,	306 P.2d 847,	AJS 48	25
47 Cal.2d 636-639,	306 P.2d 847-849,	AJS 47-51	24, 30
47 Cal.2d 637-638,	306 P.2d 848,	AJS 48-49	16, 25
47 Cal.2d 639,	306 P.2d 849,	AJS 50-51	28, 49
47 Cal.2d 639,	306 P.2d 849,	AJS 51	13, 19, 21, 23
47 Cal.2d 640,	306 P.2d 849,	AJS 52	26
47 Cal.2d 642,	306 P.2d 851,	AJS 55	24
47 Cal.2d 642,	306 P.2d 851,	AJS 56	15, 44
47 Cal.2d 643,	306 P.2d 852,	AJS 52	23-24
47 Cal.2d 644,	306 P.2d 852,	AJS 58	23-24, 24 n.5
47 Cal.2d 644-645,	306 P.2d 852-853,	AJS 59	24
47 Cal.2d 645,	306 P.2d 853,	AJS 59	24
47 Cal.2d 651-653,	306 P.2d 857-858,	AJS 69-72	36

Kansas v. Colorado:
206 U.S. 46 (1907) 38, 54

Lawrence v. State Tax Comm.:
286 U.S. 276 (1932) 5, 10

Los Angeles v. Glendale:
23 Cal.2d 68, 142 P.2d 289 (1943) 35

Lux v. Haggin:
69 Cal. 255, 10 P. 67 (1886) ..... Pages 46

Lynch v. New York:
293 U.S. 52 (1934) 30-31

McAlpine v. Baumgartner:
10 Cal.2d 409, 74 P.2d 753 (1937) 42

McLean v. Truckee-Carson Irr. Dist.:
49 Nev. 278, 245 Pac. 285 (1926) 29

Madera Irr. Dist. v. All Persons:
47 Cal.2d 687-688, 306 P.2d 890, AJS 145 16

Martin v. Hunter's Lessee:
14 U.S. (1 Wheat.) 304 (1816) 9

Miller's Executors v. Swann:
150 U.S. 132 (1893) 31

Nebraska v. Wyoming:
325 U.S. 589 (1945) 6, 38

Palmer v. Railroad Commission:
167 Cal. 163, 138 Pac. 997 (1914) 46, 47, 48

Reconstruction Finance Corp. v. Beaver County:
328 U.S. 204 (1946) 49

San Bernardino v. Riverside:
186 Cal. 7, 198 Pac. 784 (1921) 46

San Diego v. Linda Vista Irr. Dist.:
108 Cal. 189, 41 Pac. 291 (1895) 59

Santa Barbara Water Agency v. All Persons:
47 Cal.2d 706, 306 P.2d 879, AJS 210 ..... 14 n. 4
47 Cal.2d 711, 306 P.2d 882-883, AJS 218 57
47 Cal.2d 712, 306 P.2d 883, AJS 220 ..... 9, 57
47 Cal.2d 713, 306 P.2d 884, AJS 221 17

S.R.A. Inc. v. Minnesota:
327 U.S. 558 (1946) 10

Starr v. Nashville Housing Authority:
354 U.S. 916 (1957) 54

United States v. Gerlach Live Stock Co:
339 U.S. 725 (1950) 6, 7, 14, 35, 39, 50, 52, 53, 54

United States v. Sharpnack: Pages
355 U.S. 286, 2 L.Ed.2d 282, 287 n.9 (1958) 50

Ward v. Love County:
253 U.S. 17 (1920) 5, 10, 47

West Virginia v. Sims:
341 U.S. 22 (1951) 10

Wilcox v. Engebretsen:
160 Cal. 288, 116 Pac. 750 (1911) ..... 24 n. 5

Willard v. Glenn-Colusa Irr. Dist.:
201 Cal. 726, 256 Pac. 959 (1927) 36

Wilson v. Cook:
327 U.S. 474 (1946) 10

Worcester Nat. Bank, Ex parte:
279 U.S. 347 (1929) 28, 31

Statutes of the United States

Act of August 26, 1937:
§ 2, 50 Stat. 850 ..... 3 n. 1

Omnibus Adjustment Act of 1926:
§ 46, 44 Stat. 649, 43 U.S.C. § 423(e) 2, 4, 22, 25, 30, 50, 51

Reclamation Act of 1902:
§ 8, 32 Stat. 390, 43 U.S.C. §§ 372, 383 ..... 4, 6, 37, 40, 42, 49, 50, 51

Reclamation Project Act of 1939:
§ 9(c), 53 Stat. 1194, 43 U.S.C. § 485h(c) 2, 4
§ 9(d), 53 Stat. 1195, 43 U.S.C. § 485h(d) 26
§ 9(e), 53 Stat. 1196, 43 U.S.C. § 485h(e) 2, 4, 26

Statutes of California

Constitution:
Article I:
§ 11 ..... 19, 26-27, 36
§ 13 ..... 19, 26-27, 36
Article IV:
§ 1, par. 4 ..... 24, n. 5
Article XIV:
§ 3 ..... 19, 27, 34, 48

Irrigation District Federal Cooperation Law: Pages
(Calif. Water Code §§ 23175 et seq.) 22

Santa Barbara County Water Agency Act:
§ 6 33
§ 6.2 ..... 2, 34, 63
§ 10.1 ..... 2, 34, 64

Second Validating Act of 1949:
Calif. Stats. 1949, c. 782, p. 1511 ..... 19, 23, 24 n. 5, 36

Validating Act of 1949:
Calif. Stats. 1949, c. 781, p. 1508 ..... 24 n. 5

Water Code:
§ 102 ..... 44, 46
§ 1701 43
§ 22250 ..... 19, 20, 34, 35, 36, 37
§ 22437 ..... 21, 22
§§ 23175 et seq. 22
§ 23179 ..... 22, 23
§23195 29
§ 23197(a) 7, 28, 29
§ 23200 ..... 4, 7, 21, 22, 25, 28, 33, 37
§ 23242 ..... 9, 58
§ 25825 ..... 9, 58
§§ 26700-26780 56
§ 31158 34
§ 31701 34

Legislative Materials

California Legislature:
Assembly Bill 863, 1953 Sess. as amended June 6, 1955, p. 16, § 20208 29
Assembly Journal, June 10, 1953, v. 3, pp. 5666-5667 29-30
Report of State Water Problems Conference (1916), Appendix to Journals 1917, v. 6, p. 61 29

United States Congress:
35 Cong. Rec. 6679 (1902) 43
Hearings before Senate Committee on Public Lands on S. 912, 80th Cong., 2d Sess. 1218-1222 (1944) 57
H.R. Rep. No. 1468, 57th Cong., 1st Sess. 6, 7 (1902) 42
Report of the Special Committee of the U. S. Senate on Irrigation, etc., v. 1, p. 404 (1890) 42

Official Letters, Opinions and Reports

Pages

Calif. State Water Rts. Bd. Dec. No. D886, Order par. 16 . . . 14, n. 4

Law Reviews and Texts

Bannister, Federal Disposition of State Waters, 28 Harv. L. Rev. 270, 288 (1915) 46

Comment, Validity of Federal-State Contract which Violates State Constitution, 54 Colum. L. Rev. 289 (1954) . . . . . 11 n. 2

1 Darling, The Public Papers of Francis G. Newlands, 92-93 (1937) 40-41

Hart, The Relations Between State and Federal Law, 54 Colum. L. Rev. 489, 536-538 (1954) 31-33

McKinley, The Management of Water Resources Under the American Federal System, in McMahon ed., Federalism Mature and Emergent 328 (1955) 55

Note, The Federal Assimilative Crimes Act, 70 Harv. L. Rev. 685, 688-691 (1957) 50

Pound, Roscoe, Book Review, 28 Harv. L. Rev. 824 (1915) . . . 47

Powell, Report on the Lands of the Arid Region, 42-43 (2d ed. 1879) 41, 42

Wiel, Fifty Years of Water Law, 50 Harv. L. Rev. 252, 286-289 (1936) 35

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Appeals from the Supreme Court of California.

APPELLANTS' REPLY BRIEF.

ADDITIONAL STATUTES INVOLVED.

Two sections of the Santa Barbara County Water Agency Act, sections 6.2 and 10.1, which were not reproduced in the appendix to appellants' opening brief, are referred to in this reply brief. They are set forth in the appendix to this brief (pp. 63-65).

SUMMARY OF ARGUMENT.

The appellees have chosen to oppose our opening brief only on some of the questions involved in these cases. They have neither made argument nor cited authority against the following propositions:

1. That the appeals in these cases were timely (Appellants' Op. Br. 4-5), that they are cases or controversies within the meaning of Article III of the Constitution (Appellants' Op. Br. 5-8), and that if reviewable they are appealable (Appellants' Op. Br. 39-42).

2. That the acreage limitation in section 46 of the Omnibus Adjustment Act of 1926 applies to privately owned land (Appellants' Op. Br. 40-42, 44-45).

3. That the water delivery provisions of the contracts are authorized by and consistent with sections 9(c) and 9(e) of the Reclamation Project Act of 1939 (Appellants' Op. Br. 66-82).

4. That the contracts are not subject to attack on the theory that they reserve to the United

States the right arbitrarily to discontinue water delivery at the end of the contract term (Appellants' Op. Br. 82-85).

5. That the provision of the contracts reserving to the United States title in the project works, until otherwise provided by Congress, is valid (Appellants' Op. Br. 86-90).

Therefore, we will limit this reply brief to the points which are in issue.[1]

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[1] No separate reply is made to the amicus curiae briefs filed by the Irrigation Districts Association of California and by the American and California Farm Bureau Federations in support of the appellees. We wish to call attention, however, to the absence of documentation by which one might check the authority for key statements in the Farm Bureau brief, e.g.:

(1) "Notwithstanding that Court's [the California Supreme Court's] repeated declaration that it was concerned only with the lawful powers under California law of the appellant [Ivanhoe] District to assume the obligations of the proposed contract which is the subject of this proceeding . . ." (Farm Bur. Br. 11).

(2) ". . . until the final conversion of the improvement [the Central Valley Project] into an orthodox Reclamation Project about 1944 . . ." (Farm Bur. Br. 38).

(3) "As a matter of practical operation, the original and supplemental water supplies must be mingled for efficient distribution and the acreage limitation is applied to both supplies" (Farm Bur. Br. 38).

These statements are incorrect:

(1) The California Supreme Court made no declarations that it was concerned only with the lawful powers under California law of the Ivanhoe district to assume the obligations of the contract. Instead, as we have shown by quotations from its opinions (pp. 12-20 herein) the court was concerned primarily with the capacity of the United States.

(2) The Central Valley Project was reauthorized by Congress as a reclamation project in 1937 (Act of August 26, 1937, § 2, 50 Stat. 850, Appellants' Op. Br. 97-98).

(3) "When non-project water supplies are mingled with project water supplies in the Central Valley Project, the acreage limitation applies only to the new supply from the project. Article 32 (a) of Contract No. I75r-2485, dated Oc-

I. THIS COURT SHOULD ENTERTAIN JURISDICTION BECAUSE NONE OF THE JUDGMENTS REST ON NON-FEDERAL GROUNDS ADEQUATE TO SUPPORT THEM.

The decisions herein were based on federal grounds only: the capacity of the United States to make and carry out the contracts in issue; the constitutionality of the 160-acre limitation in section 46 of the Omnibus Adjustment Act of 1926 and the water delivery provisions of sections 9(c) and 9(e) of the Reclamation Project Act of 1939; the interpretation of these statutes and their applicability to the contracts; the interpretation of section 8 of the Reclamation Act of 1902; the interpretation of California Water Code section 23200 which authorizes California irrigation districts to distribute and apportion water acquired under a federal contract "in accordance with the applicable acts of Congress;" and the legality under federal law of the contract provisions reserving title of project works in the United States.

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tober 18, 1950, between the United States and the Tulare Irrigation District, which is located in the same county as the Ivanhoe Irrigation District, provides as follows:

"The provisions of this contract shall not be applicable to or affect water or water rights now owned or hereafter acquired by the District other than from the United States. Water furnished by the United States to the District pursuant to this contract must of necessity be transported by the District from the points of delivery established pursuant to Article 13 of this contract by means of the same works and channels as water now owned, or which may hereafter be acquired, by the District other than pursuant to the terms of this contract. Notwithstanding such mingling of water, the provisions of this contract shall be applicable to the quantity of water furnished to the District pursuant to the terms hereof, and such mingling of water shall not in any manner subject to the provisions of this contract the quantity of water acquired by or available to the District other than from the United States."

None of the "non-federal grounds" urged by the appellees is adequate to support the decisions.

The trust theory of the California Supreme Court and its application to the United States is such a departure from pre-existing state law that it must be regarded as "insubstantial" or "illusory" (*Lawrence v. State Tax Comm.*, 286 U.S. 276, 282-283 (1932)) or "plainly untenable" (*Ward v. Love County*, 253 U.S. 17, 22 (1920)). Even accepting the trust theory, it and the other asserted non-federal grounds are so interwoven with federal questions that they cannot stand alone (*Abie State Bank v. Bryan*, 282 U.S. 765, 773-777 (1931)).

The California court did not consider the authority of the state agencies to enter into the contracts apart from its consideration of the authority of the United States to offer them. The language of the opinions amply demonstrates that the court held inclusion of the 160-acre limitation in the contracts improper because it believed that, to apply the limitation without violating the constitutional rights of "excess" land owners, the United States needs, but cannot acquire, an "unlimited title" in the waters to be purveyed.

Whether the court was correct in these beliefs involves federal questions only: the effect of federal statutes on private property rights; and the power of the United States to acquire the property rights required for federal purposes. Each asserted state ground of decision relied on by the appellees is dependent on the court's resolution of these federal questions and none was decided in isolation from them.

II. FEDERAL LAW DOES NOT REQUIRE THE UNITED STATES TO VIOLATE FEDERAL LAW.

Under section 8 of the Reclamation Act of 1902, the United States must acquire the water rights it needs for reclamation projects under the system established by state law and may not rely on water rights alleged to arise from its ownership of the public domain (*Nebraska v. Wyoming*, 325 U.S. 589, 611-615 (1945)). If rights so acquired are insufficient, section 8 requires the United States to pay for state-recognized privately owned rights which it takes under the power of eminent domain (*United States v. Gerlach Live Stock Co.*, 339 U.S. 725, 739 (1950)). But section 8 neither compels the United States to use federal facilities to deliver water in a manner contrary to federal law (*Nebraska v. Wyoming*, 325 U.S. 589, 615 (1945)), nor prohibits the United States from acquiring, with payment of compensation, the rights it needs to operate a project in accordance with federal law (*United States v. Gerlach Live Stock Co.*, 339 U.S. 725, 740-741 (1950)). This interpretation accords with the common-sense canons of statutory construction and with the legislative history of the Reclamation Act. A contrary interpretation would subject federal reclamation law to repeal by state action.

III. CONGRESS HAS CONSTITUTIONAL POWER TO REQUIRE THE ACREAGE LIMITATION UNDER THE GENERAL WELFARE CLAUSE.

Application of the acreage limitation in California does not raise any constitutional issue of the "over-

riding" of state law by federal law. The public agencies involved in these cases have authority under California law to agree to the acreage limitation if the United States can require it (Calif. Water Code §§ 23197(a), 23200). The United States can require it without interfering with the constitutional rights of "excess" land owners, because the limitation is a restriction on the use of federal facilities and not on any inchoate water rights which such owners may own in undeveloped water. But if these inchoate rights are truly private property within the meaning of the Fifth Amendment and are needed by the United States in order to operate the projects in compliance with federal law, it may acquire them under its power of eminent domain. Such acquisition of property does not "override" state law (*United States v. Gerlach Live Stock Co.*, 339 U.S. 725, 739 (1950)).

Moreover, the general welfare power is a separate and distinct federal power limited only by the requirement that it shall be exercised for the common good as distinguished from some mere local purpose. It enjoys the benefit of the supremacy clause equally with any other federal power. Thus, if state law is "overridden" when the United States, under the power of eminent domain, acquires property needed for a federal activity undertaken pursuant to the general welfare clause, there is no invasion of the constitutional prerogatives of the state.

Development of the state's water resources to meet its growing needs requires substantial federal assistance. This can be forthcoming only if the power

and mechanics of federal-state cooperative activity are preserved against fanciful constitutional objections such as are here made by the appellees against the general welfare clause. Sustaining the federal authority will still leave the state free to reject federal aid and undertake the job alone should it ever so desire. But a contrary ruling could destroy the only means of accomplishing large-scale water development which has heretofore been effective.

IV. THE ACREAGE LIMITATION DOES NOT TAKE PROPERTY WITHOUT DUE PROCESS OR DENY EQUAL PROTECTION.

The acreage limitation is a restriction on the furnishing of water or service through subsidized reclamation projects built with money belonging to all the people of the United States. It does not affect privately owned rights to receive water through other means. Its purpose is to distribute the benefits of reclamation development widely and equitably. Rather than taking property from anyone, it makes new property available for use, and does so in a manner which secures equal protection of the laws to all concerned.

In raising the question of assessments without benefits (Appellees' Br. 80-91), the appellees have introduced objections not relied on by the California court. The question whether the Board of Directors of the Madera district correctly held that under the acreage limitation the "excess" land owned by the appellees in the Albonico case receives a benefit from the Madera district, thus justifying retention of the property in

the district and the payment of *ad valorem* assessments, was an issue in the California Supreme Court but was not decided by that court.

In the Santa Barbara decision, however, the California court held that receipt of water is not a prerequisite to keeping land in a district; indirect benefits alone may warrant collection of *ad valorem* assessments (47 Cal.2d 712, 306 P.2d 883, AJS 220). Also, direct benefits may accrue to land not delivered a surface water supply because of the raising of the underground water table that results from surface deliveries to other land. If benefits are not commensurate with *ad valorem* assessments, California law provides for special rates of assessments (Calif. Water Code §§ 25825, 23242) and authorizes recovery of assessments paid with no benefit (*Chapman v. Los Angeles*, 26 Cal.App.2d 186, 79 P.2d 128 (1938)).

ARGUMENT.

I. THIS COURT SHOULD ENTERTAIN JURISDICTION BECAUSE NONE OF THE JUDGMENTS REST ON NON-FEDERAL GROUNDS ADEQUATE TO SUPPORT THEM.

The appellees' argument against jurisdiction ignores the principle stated as long ago as *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 357 (1816), that in the review of decisions of state courts this court reviews the case which was decided, not the case which might have been decided. They seek the shelter of the rule that this court will not consider the judgment of a state court which rests "in part on a non-federal

ground adequate to support it" (*Flournoy v. Wiener*, 321 U.S. 253, 262 (1944)).

But the very statement of the rule shows the care and qualifications with which it must be applied. (1) The ground must be non-federal. (2) If non-federal it must support the judgment, i.e., the rule has no application "where, as here, the non-federal ground might have been considered by the state court but was not" (*Grayson v. Harris*, 267 U.S. 352, 358 (1925)). (3) If non-federal and used to support the judgment it must be adequate. A non-federal ground is not adequate: (a) if it is interwoven with a federal ground (*Abie State Bank v. Bryan*, 282 U.S. 765, 773-777 (1931)); or (b) if it is "insubstantial" or "illusory" (*Lawrence v. State Tax Comm.*, 286 U.S. 276, 282-283 (1932)), or "plainly untenable" (*Ward v. Love County*, 253 U.S. 17, 22 (1920)), or a "palpable evasion" to avoid a federal rule (*West Virginia v. Sims*, 341 U.S. 22, 33 (1951) (concurring opinion)). We submit that each of the qualifications shows that the rule has no application in the present cases, and, therefore, this court should take jurisdiction.

Whatever involves the power, rights and duties of the United States is a federal question. This includes the interpretation of state statutes affecting the United States (*Wilson v. Cook*, 327 U.S. 474, 486 (1946)) and the interpretation of federal contracts. (*S.R.A. Inc. v. Minnesota*, 327 U.S. 558, 564 (1946)). The appellees contend that the interpretation of federal contracts "is governed by general contract law" (Appellees' Br. 53). Nevertheless, whether and to what ex-

tent non-federal law is applied to the United States remains a federal question (*Clearfield Trust Co. v. United States*, 318 U.S. 363, 367 (1943)).

The appellees meet the axiomatic proposition that what concerns the United States is a federal question by contending that what is involved is the contractual capacity of the districts as distinguished from the capacity of the United States.[2] It is submitted that this is in error because it is refuted both by the logic of the decisions and by the language of the California court.

The chief burden of the appellees' argument is:

> "The contracts are invalid, not because the court below held the United States lacked capacity, but because it held that the state agencies lacked the capacity" (Appellees' Br. 74).

They apparently seek to show the correctness of the argument by constant reiteration (e.g. Appellees' Br. 7, 22, 24, 43, 46 etc.). Certainly they do not show it by reference to the language of the opinions below, and for good reason. The opinions demonstrate the exact opposite of the appellees' proposition.

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[2]To us it seems abundantly clear that state laws give state districts capacity to enter these contracts if the United States can acquire the necessary water rights. Therefore, we do not pause to consider whether federal law has itself endowed the districts with whatever necessary capacity they otherwise might lack (cf. *Antle v. Tuchbreiter*, 414 Ill. 571, 111 N.E. 2d 836 (1953), commented on in *Validity of Federal-State Contract which Violates State Constitution*, 54 Colum. L. Rev. 289 (1954)).

A. The California court held the districts had capacity to contract with the United States. This eliminates the state ground relied on.

The California court said and held that the districts had capacity to enter into these contracts:

> *"In entering into the contract the parties are dealing within statutory authorization*[3] but at arm's length" (47 Cal.2d 629, 306 P.2d 843, AJS 36).

> "As stated it is certainly true that it was within the power of the district under the laws of this state to do in the first instance all that the United States is obligating itself to do under the contract with reference to the construction of a distributing system. The district was authorized to obtain funds for that purpose by borrowing from the United States with or without the issuance of irrigation district bonds (Wat. Code, §§ 23280-23289) and it could contract for the payment for water distributed to it by or through an outside source at a fixed point of delivery upon the payment of the charges agreed upon from funds of its own, if available. (Wat. Code, § 22228.) In essence, therefore, we have here one party agreeing to provide the funds for construction work and undertaking to furnish water at a definite delivery point, and the other party agreeing to accept the water at that point with payment therefor at a fixed rate and repayment of the construction charges in installments within 40 years, coupled with what appears to be all sufficient assurances of security in the event of non-payment. *Within the compass of those provisions there can be no doubt of the right and power of the parties*

[3]Unless otherwise noted, emphasis in this brief is added.

to lawfully contract" (47 Cal.2d 630, 306 P.2d 843, AJS 37-38).

The California court's language contradicts the idea that the districts lack capacity to enter the contracts. What renders the contracts void, in the view of the California court, is the lack of capacity of the United States to require some of the conditions it demands of the districts. There is nothing in its opinions to indicate that the districts cannot meet these demands if the United States may require them.

B. The California court held, and acted on its holding, that the contracts are bad because the United States needs, but cannot acquire, an "unlimited title" to the water to be purveyed in order to apply the acreage limitation.

The expression "unlimited title" is, the appellees say, that of the appellants (Appellees' Br. 61). If they thereby mean to imply that we have distorted the reasoning of the California court, they are wrong. The expression is that of the court and we used it, and we believe correctly, because the court used it:

> "As previously noted the 160-acre limitation is inapplicable in the present case where the title to the water to be purveyed is not an *unlimited title* in the United States" (47 Cal. 2d 639, 306 P.2d 849, AJS 51).

That the court was not using the expression casually or unguardedly appears from its several statements of like import referring to what it believed the United States claims or requires, e.g., "title to the water without restriction" (47 Cal.2d 620, 306 P.2d 837, AJS

22), and "absolute ownership" (47 Cal.2d 620, 306 P.2d 837, AJS 23).

Further, it held the United States is subject to "the limitations of title herein determined" (47 Cal.2d 628, 306 P.2d 842, AJS 35). This follows its postulate that:

> "The questions raised in this case cannot be answered without reference to the nature and character of the title to the water rights involved" (47 Cal.2d 613, 306 P.2d 833, AJS 12).

The court described the various methods by which the United States has acquired water rights for the Central Valley Project (47 Cal.2d 618-619, 306 P.2d 836-837, AJS 19-21), e.g. by purchase, assignment and applications filed in its own name. The court, however, neglected the rights acquired by eminent domain (*United States v. Gerlach Live Stock Co.*, 339 U.S. 725, 739 (1950).[4] The court then reached the following conclusion:

> " . . . title . . . is of great importance because upon it depends the extent to which the state or the *United States* or any party dealing with the domestic waters of the state *may exercise powers of control*" (47 Cal.2d 619, 306 P.2d 837, AJS 21-22).

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[4]The Cachuma project involves only heretofore unappropriated water (47 Cal.2d 706, 306 P.2d 879, AJS 210). On February 28, 1958, the State Water Rights Board granted permits to the United States. Under these permits the rights of the public agencies concerned are "subject to compliance by the public agencies concerned with any and all present and future valid contractual obligations with the United States . . ." (Calif. State Water Rts. Bd. Dec. No. D886, Order par. 16).

The court held that the "trust" with which it has encumbered all the waters in the state affects all the rights of the United States from whatsover source acquired:

> "*Whatever interest or title the United States has acquired to water by appropriation, assignment or by other means of acquisition* in furtherance of the execution of its trust relationship with the water users of the state is necessarily subject to the limitations of title herein determined" (47 Cal.2d 628, 306 P.2d 842, AJS 35).
>
> "Moreover, as we have already held, *whatever title the United States has to the domestic waters of this state is limited* by the trusteeship under which that title was acquired. The United States cannot administer the corpus of that trust except in the manner defined by the terms of the trust, namely, the applicable water law of this state." (47 Cal.2d 642, 306 P.2d 851; AJS 56).

These holdings of the California court, that the water users of the state have inchoate rights incapable of acquisition by the United States and that therefore any title to water rights acquired by the United States is correspondingly limited, were the predicate of the court's conclusion that the acreage limitation in the contracts is unconstitutional:

> "As to the acreage limitation of the contract, it is therefore concluded that the extent of the right of an owner of real property to the use and enjoyment of his property right, including the water right which may be attached thereto, cannot be constitutionally limited on the sole basis of the amount of property he owns. . . . There

appears to be no basis founded on reason or authority why the owner of a property right which is or may be appurtenant to all of his land suitable for irrigation can be limited in the enjoyment of that right to 160 acres of his larger holdings. The same right should attach to his lands in excess of 160 acres and to the excess lands of all those similarly situated. . . .

"Notwithstanding the long prevailing provisions of the original Reclamation Act of 1902 that in the construction and operation of the reclamation projects under the supervision of the Secretary of the Interior, rights vested under state law should not be disturbed and should be protected, the contract in controversy is proposing to transgress those vested rights" (*Ivanhoe* case, 47 Cal.2d 637-638, 306 P.2d 848, AJS 48-49).

"For reasons stated in the *Ivanhoe* case the contract in the present case is ineffective in that it purports to deprive the landowners of the plaintiff district of vested rights as members of the class who are the beneficiaries of the trust under which the United States acquired appropriative rights to the domestic waters of this state; in that it seeks to deprive so-called 'large landowners' of rights to water for their lands in excess of 160 acres although such landowners are qualified members of the class who are the beneficiaries under the declared trust, and who are denied thereby due process and equal protection of the laws; . . . (*Madera* case, 47 Cal.2d 687-688, 306 P.2d 890, AJS 145).

"In the fifth affirmative defense the defendants raise issues which have been discussed and disposed of in *Ivanhoe* . . . and in *Madera*. . . . In

accordance therewith it is concluded that the excess land provisions of the contracts involved here, which are substantially the same as those in the Ivanhoe and Madera contracts, are inapplicable and if not declared to be so would deprive the landowners of the members units of their property rights without due process of law and constitute a denial of the equal protection of the laws" (*Santa Barbara* case, 47 Cal.2d 713, 306 P.2d 884, AJS 221).

These excerpts from the opinions of the California court demonstrate that it invalidated the acreage limitation because it believed (1) that the limitation cannot be constitutionally applied by the United States unless the United States has an "unlimited title" in the water, and (2) that the United States lacks the ability to acquire an "unlimited title." Both beliefs raise federal questions:

1. Does the limitation, which is required by federal law, deprive owners of excess land of inchoate rights which they may possess in the undeveloped waters of the state and thereby deny them equal protection of the laws, in which event the United States would need title not limited by such inchoate rights in order to apply the limitation? Or, on the contrary, is the limitation merely a restriction on the use of federal facilities and not on water rights, as we have contended in our opening brief (Appellants' Op. Br. 61-63)?
2. If the United States does need an "unlimited title" in order constitutionally to apply the limitation, does it have the power to acquire such a title?

If either question were answered differently than the California court answered it, the conclusion as to invalidity of the acreage limitation provisions in the contracts would necessarily be different also.

C. If the United States can acquire the title needed for project purposes the same judgment would necessarily not be rendered below for title would then be irrelevant and the California court so states.

"*If the United States,* or the State of California or any of its agencies, *should be declared to be the owner of the title to the water without restriction it would necessarily follow that it would have complete dominion and control over such property for purposes of distribution or for any other incident of ownership and use.* In such case the principles of law applying to unrestricted ownership would control. On the other hand, if the United States or the State of California or its agencies, in dealing with the storage, sale, distribution and use of such water, is acting as trustee for the beneficiaries of the trust, other principles of law, namely the law of trusts, would necessarily apply. *The exclusion of the question of title from the case could be justified only on the theory that without question, and as a matter of law, the fee simple unrestricted title to the water is in the state or in its assignee, the United States, or in the United States other than by assignment unaffected by the claims of the land owners in the District as the beneficiaries of a trust.* Such a theory finds no support in the present case" 47 Cal.2d 620, 306 P.2d 837; AJS 22).

"As indicated the federal law could be applicable only on the theory that the United States is the

owner absolute of the domestic waters of the state with the right to the use thereof freed from any trust relationship on behalf of the real owners thereof, namely, the water users of the district. As also indicated such a theory is untenable and it necessarily follows that the inclusion in the contract of articles 34, 35, 36 and 37 cannot be legally justified'' (47 Cal.2d 639, 306 P.2d 849, AJS 51).

Thus, the California court has itself declared that should the conclusion as to the United States' rights be changed, the conclusion of the case would necessarily be changed. (It is impossible to say that the actual result would be changed, for, as the appellees point out, a state question concerning the notice of election has been left open (Appellees' Br. 32). Leaving such a question open, however, cannot defeat federal review (*Grayson v. Harris*, 267 U.S. 352, 358 (1925)).

D. The non-federal grounds on which the appellees rely are dependent on and interwoven with the federal grounds and so are inadequate to support the judgments.

The appellees rely on what they claim are non-federal grounds adequate to support the judgments. These are the references to California Water Code section 22250; the nature of an irrigation district as a trustee under state law; the California court's treatment of the Second Validating Act of 1949 (Calif. Stats. 1949, c. 782, p. 1511); the "debtor-creditor" relationship between the districts and the United States; and the effect of California Constitution Article I, sections 11 and 13, and Article XIV, section 3.

The California court says, however:

> "If the United States, . . . should be declared to be the owner of the title to the water without restriction, it would necessarily follow that it would have complete dominion and control over such property for purposes of distribution or for any other incident of ownership and use. In such case the principles of law applying to unrestricted ownership would control" (47 Cal.2d 620, 306 P.2d 837, AJS 22).

Inspection of the holdings with regard to each of the appellees' points shows that they are so interwoven with the federal question of the nature of the United States ownership that they cannot in themselves support the opinion.

1. California Water Code section 22250 is applicable only if the United States needs, but cannot acquire, an unlimited title.

The appellees refer to the California court's statement concerning California Water Code section 22250 (Appellees' Br. 33):

> "The duty of both of the contracting parties in the performance of their obligations to the landowners in the district is set forth in section 22250 of the Water Code" (47 Cal.2d 636, 306 P.2d 847, AJS 46).

In its very statement this is an obvious example of interweaving of federal and state questions. It in no way indicates the surprising conclusion that if a different result were reached as to the duty of the United States, the duty of the district would remain unaltered (cf. Appellants' Op. Br. 34, 65). The appellees say

that even if the United States were the absolute owner in fee of the waters within the Central Valley Project and could condition or limit their use as it sees fit, still the judgments of the court below would stand and the contracts would of necessity be declared invalid (Mo. to Dis. 22). But the California court reasoned that if the United States could secure an unlimited title then California Water Code section 23200 would apply:

> "Section 23200 contemplates that *applicable* federal law shall apply. As previously noted the 160-acre limitation is inapplicable in the present case where the title to the water to be purveyed is not an unlimited title in the United States" (47 Cal.2d 639, 306 P.2d 849, AJS 51 (emphasis in original)).

2. If the United States has or can acquire the title needed to apply the acreage limitation, the trust status of a California irrigation district is immaterial.

The appellees refer to the nature of an irrigation district as a trustee under state law (Appellees' Br. 31, citing 47 Cal.2d 624-625, 306 P.2d 840, AJS 29). The trust arises from California Water Code section 22437:

> "The title to all property acquired by a district is held in trust for its uses and purposes. The district may hold, use, acquire, manage, sell or lease the property *as provided in this division.*"

Twenty years ago the California court said:

> "Indeed, it is futile to attempt to discover the 'beneficiaries' of the statutory trust created by section 29 [now § 22437]" (*Clough v. Compton-*

Delevan Irr. Dist., 12 Cal.2d 385, 389, 85 P.2d 126, 128 (1938)).

But even though the court impliedly found the futility no longer troublesome, its reference to the trust does not establish the proposition that the case was decided on state grounds. A reading of section 22437 shows that it recognizes whatever powers the district has under the Irrigation District Federal Cooperation Law (Calif. Water Code §§ 23175 *et seq.*), which is part of the division of the code referred to in section 22437. The "enlarged powers" (Calif. Water Code § 23179) of irrigation districts under the Cooperation Law to distribute and apportion water acquired under a federal contract "in accordance with the *applicable* acts of Congress . . . and the provisions of the contract" (Calif. Water Code § 23200) were eliminated by the California court because it believed that section 46 of the Omnibus Adjustment Act of 1926, the act of Congress requiring the acreage limitation, is not "applicable." This belief, as we have already shown by quotations from the California court's opinion (pp. 18-20 herein), is based on the court's erroneous theory that the United States does not have, and lacks the authority to acquire, the sort of title in water necessary to make section 46 applicable. It is obvious, therefore, that the real grounds of decision were federal.

The fact that the federal law is not discussed by the California court until after the trust nature of the irrigation district is discussed (Appellees' Br. 36) is,

of course, irrelevant. What is important is the content of the discussion, not its order. In the whole context (47 Cal.2d 624-629, 306 P.2d 840-842, AJS 29-35) it is clear that the United States is being assigned the status of a trustee somehow analogous to that of an irrigation district under state law. The "enlarged powers" of the district (Calif. Water Code § 23179) are being subordinated to the United States' status as trustee and, since the property in the hands of the United States is encumbered, it will also be encumbered in the hands of the district. The clear implication of the opinion is that the federal requirements would be applicable and that the district could deliver water in accordance with those requirements if the trust relationship of the United States to the landowner were absent (47 Cal.2d 620, 639, 306 P.2d 837, 849, AJS 22, 51).

3. The California court's reference to the Second Validating Act of 1949 does not demonstrate reliance on state grounds.

The appellees argue that because the California court held the Second Validating Act of 1949 (Calif. Stats. 1949, c. 782, p. 1511) ineffective to cure what it considered constitutional defects in the Ivanhoe contract, this proves that the contracts must be invalid on a state ground (Appellees' Br. 23, 43). This is in error because inspection of the opinion shows that the constitutional defects with which the court was concerned were the conduct of the United States as a utility and federal law as referred to by state law.

The California court first held the act inapplicable as a matter of interpretation (47 Cal.2d 643-644, 306

P.2d 851-852, AJS 56-58). This holding is an interesting sidelight on the length to which the court went to strike down these contracts, for it is obviously wrong.

The court then held that the act did not and could not relate to public utilities (47 Cal.2d 644-645, 306 P.2d 852-853, AJS 59). Since the only "utility" involved here is the United States (47 Cal.2d 642, 306 P.2d 851, AJS 55), it is obvious that the reference to utilities has to do with the United States, whose rights, even under state law, are federal questions.

Finally, the court stated:

> "In addition any validating act could not have confirmed the 160-acre limitation for the obvious reason that the Legislature could not have theretofore constitutionally authorized it" (47 Cal. 2d 645, 306 P.2d 853, AJS 59).

This amounts to no more than a reiteration of what the California court has already held (47 Cal.2d 636-639, 306 P.2d 847-849, AJS 47-51), that a federal law,

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[5]The Validating Act of 1949, Calif. Stats. 1949, c. 781, p. 1508, is identical with the Second Validating Act except that the former has an "urgency clause", which made it immediately operative, thereby precluding a referendum (Calif. Const., Art. IV, § 1, par. 4). The acts were adopted on the same day in immediate succession. The first act validated transactions of public agencies prior to the act's operative date. Since the interpretation given to the second act by the court allows it to cover only the very same transactions as those already covered by the first act, on which a referendum was precluded, the reference to a referendum in the opinion is mystical rather than intelligible (47 Cal.2d 644, 306 P.2d 852, AJS 58). The California court has heretofore approved prospective validating acts without blinking (*In re East Bay etc. Water Bonds of 1925*, 196 Cal. 725, 735-736, 239 P. 38, 42-43 (1925); *Wilcox v. Engebretsen*, 160 Cal. 288, 293, 116 Pac. 750, 751-752 (1911)).

section 46 of the Omnibus Adjustment Act of 1926, is unconstitutional and therefore inapplicable under California Water Code section 23200. Obviously, the quoted statement is another one which would have to be changed if it were held that the United States either did not need an "unlimited title" in order to apply the limitation or, if it did need an "unlimited title," had the power to secure it.

The acreage limitation was held unconstitutional because the court felt it deprives property owners of property without due process, and restricts the use of property on the basis of the amount owned (47 Cal.2d 636, 637, 306 P.2d 847, 848, AJS 48, 49). The property in question is the "inchoate right of present and potential water users" to an adequate supply of fresh water (47 Cal.2d 626, 306 P.2d 841, AJS 32). The court's statement as to the validating act was thus predicated on the assumption that the United States cannot acquire what the court felt to be the necessary unlimited title. This is another example of the fact that the opinion turns on a federal issue, the California court's belief that:

> "... title . . . is of great importance because upon it depends the extent to which . . . the United States . . . may exercise powers of control" (47 Cal.2d 619, 306 P.2d 837, AJS 21-22).

4. The debtor-creditor relationship is based on federal law.

The appellees argue that in declaring the "debtor-creditor" relationship between the districts and the United States, "of necessity" the California court was looking at state rather than federal law (Appellees'

Br. 39). This proposition is flatly contradicted even by the portions of the opinion relied on by the appellees.

The debtor-creditor relationship is first mentioned immediately after the court's statement that the parties "are dealing within statutory authorization" (47 Cal.2d 629, 306 P.2d 843, AJS 36-37). Later the court said:

> "We have heretofore declared the debtor-creditor nature of the contract in question. In arriving at that conclusion it was considered that *applicable federal law* requires that the contract specify a specific amount of money to be repaid by the district in installments within 40 years . . ." (47 Cal.2d 640, 306 P.2d 849, AJS 52).

This was followed by an interpretation of sections 9(d) and 9(e) of the Reclamation Project Act of 1939. We have already argued at length the error of this interpretation (Appellants' Op. Br. 71-85). The point we make here is that whether the court's answers were right or wrong, the questions are federal: interpretation of a federal statute; the obligation of the United States with regard to federal property; and the corresponding federal rights of the districts (47 Cal.2d 631, 306 P.2d 844, AJS 39-40).

5. The testing of a federal statute by a state constitution presents a federal question.

The appellees argue that the California court held the contracts to be beyond the powers of the districts and the Santa Barbara Agency on the basis that they are violative of California Constitution Article I, sec-

tions 11 and 13, and Article XIV, section 3, even if they are authorized by statute; and that this is an independent state ground of decision (Appellees' Br. 40-42, 44-45).

Article I, section 11, which requires the uniform application of general laws, was never cited by the California court. The appellees suggest (Appellees' Br. 42) that it was in the court's mind when it discussed the unconstitutionality of the 160-acre limitation as a denial of equal protection of the laws (47 Cal.2d 636-637, 306 P.2d 847-848, AJS 47-49.) But since the California Constitution does not have an equal protection clause by that name, it seems more likely that the California court was referring to the federal constitution where such a clause does appear.

Article XIV, section 3, limits water rights in California to "such water as shall be reasonably required for the beneficial use to be served" and was cited by the California court solely in its discussion of the history of riparian rights in this state (47 Cal.2d 622-623, 306 P.2d 838-839, AJS 26-27).

Under these circumstances, we submit that the California Constitution provisions constituted no basis of decision. But if they did, they were used as a test of the powers of the United States and the validity of federal statutes. The constitutional authority of the districts and the Santa Barbara Agency to accept the federal terms was never considered independently of the federal question of the power of the United States to offer them. Since the question under consideration was the validity of federal statutes and federal pow-

ers, whether the federal or state constitution was referred to is immaterial. (*Ex parte Worcester Nat. Bank*, 279 U.S. 347, 359, 360 (1929)).

E. Interpretation of California Water Code Section 23200 presents a federal question and no substantial non-federal question.

The appellees advert to the California court's discussion of California Water Code section 23200 and claim it presents a non-federal question of interpretation, i.e. has the state law incorporated the federal law (Appellees' Br. 39). The section provides:

> "All water, the right to the use of which is acquired by a district under any contract with the United States shall be distributed and apportioned by the district in accordance with the *applicable* acts of Congress, the rules and regulations of the Secretary of the Interior thereunder, and the provisions of the contract. . . ."

The word *applicable* in the above section is emphasized by both the appellees (Appellees' Br. 37, 38, 39) and the California court (47 Cal.2d 639, 306 P.2d 849, AJS 50-51). Of course, the word is a redundancy and adds nothing to the meaning of the section. Certainly if it were eliminated, inapplicable acts of Congress would not thereby become applicable. (To like effect note the reference to "the relevant acts of Congress" in Calif. Water Code § 23197(a)).

The Irrigation District Federal Cooperation Law admits of but one rational interpretation; it refers to the acreage limitation. This is supported not only by its own obvious language in section 23200 and other

sections of the law (e.g. §§ 23195, 23197(a), Appellants' Op. Br. 110), but also by its history.

The California law and similar ones in other states were enacted as part of a program of the former Reclamation Service to facilitate cooperation between districts and the United States (*McLean v. Truckee-Carson Irr. Dist.*, 49 Nev. 278, 290, 245 Pac. 285, 288 (1926)). Indeed it was recommended to the California Legislature because, "It is desired to render easier cooperation with federal authorities under the national Reclamation Act" (California Legislature, Report of State Water Problems Conference (1916), Appendix to Journals 1917, vol. 6, p. 61).

In 1953 a bill was introduced in the California Legislature which would have specifically denied to districts authority to conform to federal requirements Instead it provided: "All water acquired by a district under any contract with the United States shall be distributed and apportioned by the district *in accordance with applicable state laws.*" (Assembly Bill 863, 1953 Sess. as amended June 6, 1953, p. 16, Water Code § 20208). A few days before the session ended, the Governor sent the following message to the authors of the bill:

> "Because I recommended legislation creating a department of water resources in my Message to the Legislature last January, I feel I should advise you that I would not be able to sign your Assembly Bill No. 863 if it should come to my desk in its present form. There are several reasons, but principally, (1) *the incorporation therein of substantive changes in the Water Code*

limiting irrigation districts in their right to contract with the United States Government, which limitations would prevent the execution of contracts essential in our federal reclamation projects. (2) The drastic limitations placed on the District Securities Commission in approving contracts between districts and the Federal Government. (3) The establishment of a state water attorney selected through civil service who shall be 'independently responsible for the exercise of the jurisdiction, powers and duties of the legal division.'

"These features of the bill in particular differ from my concept of a department of water resources that can effectively guide our State in the development of its water resources. I write you at this time because obviously it would be impossible for me to return the bill to the Legislature before adjournment with my reasons for disapproval" (Assembly Journal, June 10, 1953, p. 3, pp. 5666-5667).

The bill died.

Against this background to argue that section 46 of the Omnibus Adjustment Act of 1926 was found inapplicable as a matter of interpretation of state law is to argue that communication even by plain language is impossible.

The mode whereby the California court construed the federal law and found it invalid and hence inapplicable (47 Cal.2d 636-639, 306 P.2d 817-849, AJS 47-51) has already been explained (pp. 20-21, 24-25 herein). The appellees' reliance on the rule in *Lynch v. New*

York, 293 U.S. 52 (1934), is misplaced because it and like cases dealt with state statutes. Here what was invalidated was the federal statute referred to by the state statute and the fact that the federal statute may have been invalidated on the basis of the state constitution supports, not negates, jurisdiction (*Ex parte Worcester Nat. Bank*, 279 U.S. 347, 359, 360 (1929)).

Similarly, the reliance of appellees on *Miller's Executors v. Swann*, 150 U.S. 132 (1893), is wrong. Two situations must be distinguished. One is where a state law refers to a federal law and adopts it in a field of no federal concern. For example, a state may adopt the Federal Rules of Civil Procedure. This obviously would not make every question of state practice a federal question because, regardless of the reference, the problem would still be one of exclusive state concern.

But where, as here, a state attempts to interrelate the conduct of its agencies with those of the United States in a like field, a situation where the state and federal laws are interwoven to meet a common purpose, the result is different (Appellants' Op. Br. 38-39).

The difference is concisely and lucidly expounded as follows:

> "State law, of course, is not transformed into federal merely by phrasing it in federal language. The identical language may receive differing interpretations at the hands of state and federal courts. So far as the Federal Constitution is concerned, there is nothing to prevent a state legislature from dealing with this difficulty by direct-

ing the state courts to conform as nearly as may be with federal interpretations. But can the legislature, or the state court by construction of the state statute, go further and, in effect, make the interpretation of the federal language, even when employed for state purposes, a federal question subject directly to authoritative resolution by the Supreme Court?

"Despite contrary intimations in a few recent Supreme Court decisions, time and mature reflection seem likely to yield the answer that they cannot. *The situation must be sharply distinguished from that in which state law refers to federal, interrelating its own law with it but without seeking to enlarge the sphere of primary federal governance.* Thus a state may give a stockholder in a state-created corporation a right of action to prevent the directors from investing in illegally issued securities, and a question may arise whether federal securities were or were not legally issued. Again, a state may confer a private right of action for breach of a federally imposed duty, and a question may arise whether the federal duty has indeed been violated. In such cases as these the Supreme Court will treat the point of federal law as presenting a genuinely federal questions, reviewable on certiorari or appeal from a state court's decision. But it is a different matter to permit the legislature of a single state to alter the distribution of federal and state powers by making federal law directly controlling in a sphere of exclusive state responsibility. Plainly the state could not unilaterally appropriate the services of federal administrative agencies in this fashion. There seems to be no better reason why

they should be able thus to appropriate the services of the federal courts" (Hart, *The Relation Between State and Federal Law*, 54 Colum. L. Rev. 489, 536-538 (1954) notes omitted).

F. The Santa Barbara Case shows that federal grounds were relied on to the exclusion of state grounds.

The appellees state correctly (Appellees' Br. 44) that we argue that since the four cases were decided on a common basis, and since there is no common state basis between *Santa Barbara* and the other three, it follows that the cases were decided on federal grounds alone (Appellants' Op. Br., 27, 29-31). They do not dispute the logic of our conclusion. Rather they attempt to refute the premise that there is no common state ground. An examination of their argument shows why it should fail.

The appellees first attempt to ignore or neglect the difference. Thus, in their motion to dismiss (p. 2) they simply label the Santa Barbara Agency and its member units irrigation districts. Then this is aggravated by implying that the powers of the Agency to contract with the United States are the same as those of an irrigation district (Motion to Dismiss 11; Appellees' Br. 9). Neither the label nor the implication is warranted by the facts.

Inspection of section 6 of the Santa Barbara Act (Appellants' Op. Br. 113) will show that the Agency has full and independent powers to cooperate with the United States. "In addition to the powers specifically set forth in this act," it has the powers of an irrigation district under the Irrigation District Fed-

eral Cooperation Law to the extent "not inconsistent with the provisions of this [Santa Barbara County Water Agency] act." Thus even if the appellees were correct in asserting that the result in the *Ivanhoe* and *Madera* cases depends merely on interpretation of California Water Code section 23200, a part of the Cooperation Law (Appellees' Br. 39), this could not control the *Santa Barbara* case because the Santa Barbara Agency is not limited by section 23200.

Similarly, neither the Agency nor its member units are controlled by other portions of the Irrigation District Law. Not only is there no counterpart, in the statutes which govern the Agency and its member units, of California Water Code section 22250 concerning apportionment of water ratably to assessments, but their statutes contain requirements irreconcilable with that scheme of apportionment. The agencies are specifically directed to finance their operations by revenues from water rates so far as possible and only if these are inadequate to levy property taxes (Santa Barbara County Water Agency Act §§ 6.2, 10.1; California Water Code §§ 31158, 31701).

Appellees' mode of handling the inapplicability of section 22250 is to say that the inapplicable is applicable. Although they concede that the section "does not in terms apply", it is said to represent a state policy of general application embodied in California Constitution Article XIV, section 3 (Appellees' Br. 44). This argument is borne out neither by the words of the Constitutional provision nor by what the California court itself said about the provision and about

section 22250. The provision states that the "general welfare requires that the water resources of the state be put to [maximum] beneficial use" and that water rights are "limited to such water as shall be reasonably required for the beneficial use to be served." "The amendment was designed primarily to destroy the right to object to the use of water not presently needed . . ." (*Los Angeles v. Glendale,* 23 Cal.2d 68, 75, 142 P.2d 289, 293 (1943)). The amendment, as this court has pointed out, deprived a riparian of his former right to an injunction to have the natural flow of the stream continue past his land even if he was getting no substantial benefit from it, and remitted him to his remedy by way of damages (*United States v. Gerlach Live. Stock Co.,* 339 U.S. 725, 751, 754 (1950); Wiel, *Fifty Years of Water Law,* 50 Harv. L. Rev. 252, 286-289 (1936)). In this case the California court said no more (47 Cal.2d 622-623, 306 P.2d 838-839, AJS 25-27).

Nowhere have we found anything to indicate that the amendment has been used to require the delivery of water to any particular land. Actually, it may indicate the possible invalidity of California Water Code section 22250 insofar as the section purports to apportion water to land which cannot use it beneficially. In a case decided before the amendment, the California court held that an irrigation district could proceed by way of both water tolls and assessments. It noted the obvious lack of relationship between assessed value of land and its need for water, and that under the "strictly assessment plan" the lands which

need water least might be entitled to most. It said: "Such a situation is contrary to every principle of the law governing the use of water from the time when water was first applied for irrigation purposes in this state" (*Willard v. Glenn-Colusa Irr. Dist.*, 201 Cal. 726, 742, 258 Pac. 959, 966 (1927)). Presumably such a situation could result in invalidating either the section or its particular application. (For a description of actual assessment and water apportionment practices in irrigation districts see the dissent of Gibson, C.J., 47 Cal.2d 651-653, 306 P.2d 857-858, AJS 69-72).

Elsewhere the appellees argue that the acreage limitation is bad because it has "no relation whatsoever to the needs of the land" (Appellees' Br. 41). But, they argue inconsistently that an inapplicable statute, which the California court says has the very effect the appellees purport to condemn, should be imposed on the Santa Barbara Agency. From this inconsistency alone, it can be concluded that the appellees' argument that section 22250 represents a general state policy is baseless.

In a final attempt to avoid the lack of a common state ground in the irrigation district and Santa Barbara cases, the appellees imply that it lies in Article I, sections 11 and 13, of the California Constitution; they refer to the California court's treatment of the Second Validating Act as so holding (Appellees' Br. 44-45). But, as we have herefofore pointed out, in stating that the validating act could not cure constitutional defects in the Ivanhoe contract, the Califor-

nia court was concerned with the conduct of the United States as a utility and the constitutionality of the federal 160-acre limitation as referred to in California Water Code section 23200 (pp. 23-25 herein). Both are federal questions.

Certainly, nothing above, and nothing cited by the appellees, supports the conclusion that section 22250 applies to the Santa Barbara Agency. Further, there is no showing that the *Santa Barbara* case depends on any other purported non-federal ground. Thus, no matter what conclusion is reached by this court on the irrigation district cases, the *Santa Barbara* case should be reversed.

II. FEDERAL LAW DOES NOT REQUIRE THE UNITED STATES TO VIOLATE FEDERAL LAW.

The appellees argue that section 8 of the Reclamation Act of 1902 prevents the United States from acquiring the sort of rights it needs to be able to conform to other requirements of the reclamation laws (Appellees' Br. 47-63). We have already argued our views on this as a matter of interpretation (Appellants' Op. Br. 24-25, 57-60).

The appellees, however, accuse us of a "studied disregard" (Appellees' Br. 60) of the congery of citations which they offer. The accusation is correct. We have disregarded the cases because we believe they are irrelevant. We believe they are irrelevant because they have to do only with the types of systems the states may use to define property rights in water.

None of them say or imply that through the ostensible definition of property rights in water, a state may compel the United States to use federal facilities to deliver water in a manner contrary to federal law. For example, in *Kansas v. Colorado*, 206 U.S. 46 (1907), so heavily relied on by the appellees (Appellees' Br. 56, 65-66), what the court rejected was an attempt by the United States to impose on the State of Kansas against its will a different system of water rights (appropriative in lieu of riparian) (206 U.S. 86-87, 94-95). No issue was involved as to the distribution of water made available by a federal project.

A. The acquisition of water rights must be distinguished from the operation of projects.

In *Nebraska v. Wyoming*, 325 U.S. 589, 611-615 (1945), this court held that when the United States engages in reclamation development under section 8, it may not rely upon water rights alleged to arise from its ownership of the public domain, but instead must secure water rights for its project under the system established by state law. Immediately following this holding, however, this court cautioned that, "We do not suggest that where Congress has provided a system of regulation for federal projects, it must give way before an inconsistent state system" (325 U.S. at 615).

This is the very distinction we assert here.[6] By virtue of section 8, the United States must proceed

[6]We agree with the Solicitor General that, "As in *Nebraska v. Wyoming*, 325 U.S. 589, 611-616, it is unnecessary here to determine who has the title to unappropriated water" (U.S. Amicus

under state law to acquire the rights in unappropriated water which it needs for a reclamation project. The appellees concede that it is so proceeding in the instant cases (Appellees' Br. 52). If rights acquired in this manner are insufficient to permit operation of the project as provided and authorized by federal law, section 8 requires the United States to pay for the privately owned rights which are needed. This is the rule of *United States v. Gerlach Live Stock Co.*, 339 U.S. 725, 739 (1950). And this is what the United States will have to do here if operation of the project in accordance with the acreage limitation truly deprives any persons of vested property rights.[7]

The appellees agree with us that the California court construed section 8 as compelling the United States to give *specific* recognition to water rights established under state law (Appellants' Op. Br. 58-59), but argue that this construction is plainly correct (Appellees' Br. 60). But if it is, why was the United

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Curiae Br. 68). The reason is that the authority of the United States to make and perform the contracts in issue does not depend on the answer to that question. The comments of the Solicitor General on the question (U.S. Amicus Curiae Br. 67-69) are an incomplete statement of a problem that is particularly complex and vexatious in the western states, and erroneous inferences can be drawn from it. However, because of its irrelevancy, we do not feel it necessary to express our own views.

[7] We question whether the inchoate rights declared by the California court have sufficient substance to constitute property within the meaning of the Fifth Amendment of the United States Constitution. And even if they do, as we have elsewhere stated (Appellants' Op. Br. 61-63; p. 17 herein) we believe that the limitation is a restriction on the use of federal project facilities and that it does not in any way interfere with those inchoate rights. If we are correct, it is, of course, unnecessary for the United States to acquire them in order to apply the limitation.

States not required to give specific recognition to the water rights taken in the *Gerlach* case? And if it was permissible under section 8 for the United States to take, with compensation, the water rights of the Gerlach Live Stock Company because needed for the project, why would the taking, with compensation, of the inchoate rights of "excess" landowners, if needed for the project, be a violation of section 8 or constitute an overriding of state law?

B. Section 8 does not require that other federal laws be ignored.

That section 8 was intended to permit the imposition of the acreage limitation is not only demonstrated by common-sense canons of interpretation and by case authority, but also by the statements of the Congressional sponsors of the Reclamation Act of 1902.

Senator Newlands, the principal author, said:

> "So when we came to the national irrigation act we not only provided for the reclamation of government lands but we also realized that intermingling with the government lands and adjacent to them were large areas of land held in private ownership, and that the development of the country required that those lands should have water just as much as the lands in government ownership. What we wished to avoid was storing water and distributing it for the advantage of large land owners, and what did we provide? We provided in that act that wherever land was in private ownership the owner of the land could obtain water for only 160 acres.
>
> "The result is, that when the distributive system of water is brought in reach of a great area

of land the very fact that the water can be secured adds value to the land. The owner of the land finds that he cannot water the land himself, because he can only secure a water right for 160 acres. He is therefore induced by self-interest to divide up his land and sell it to actual settlers; and the Government in those instances will grant to each settler a water right for only 160 acres, and compel the gradual repayment of its cost. So the very policy of the Government, as shown in that act, is in the line of breaking up the *existing system of land monopoly and of land concentration in that region. . .*" (1 Darling, The Public Papers of Francis G. Newlands 92-93 (1937)).

"That region" included the San Joaquin and Sacramento Valleys of California where "large concentrations" of land were taking place (*id.* 91).

Moreover, the proviso of section 8 itself, requiring appurtenancy of water rights to land, actually appears to be a means of enforcing the limitation. One of the fears of the early students of the law of appropriation of waters in the west was that appropriation would permit the development of a water monopoly. John Wesley Powell, writing in 1879, said that under the appropriative system "water rights will in many cases be separated from land rights . . . monopolies of water will be secured." As a precaution he suggested:

> "The *user right* should attach to the *land* where used, not to the individual or company constructing the canals by which it is used. The right to water should inhere in the land where it is used;

> the priority of usage should secure the right" (Powell, Report on the Lands of the Arid Region 42-43 (2d ed. 1879)).

Similarly, in 1890 it was suggested in the Senate "that ownership of the water should be inalienable from the land, and that men could not sell or alienate the water right except by selling the land, and that when they did the man who had the land should have the water right" (Report of The Special Committee of the U.S. Senate on Irrigation Etc., v. 1, p. 404 (1890)).

This idea of inalienability of water from the land eventually found its way into section 8 of the Reclamation Act of 1902. For example, Congressman Mondell in discussing the original bill said:

> "In order that the water rights acquired under the provisions of the act shall be of the character most approved by centuries of irrigation practice, and such as will absolutely insure the user in his right and prevent the speculative use of water rights, the character of the right which is contemplated under the act is clearly defined to be that of appurtenance or inseparability from the lands irrigated and founded on and limited by beneficial use" (H. R. Rep. No. 1468, 57th Cong., 1st Sess. 6, 7 (1902)).

The requirement of appurtenancy as provided in section 8 exists whether required by state law or not. It appears as a proviso and hence an exception (*McAlpine v. Baumgartner*, 10 Cal.2d 409, 417-418, 74 P.2d 753, 757 (1937)) to the general rule that otherwise

state law will be followed. Furthermore, the legislative history is express and clear. Congressman Mondell, discussing the part of the bill which eventually became section 8, said in the House of Representatives:

> "These most important provisions of the law prevent all evils which come from recognizing a property right in water with power to sell and dispose of the same elsewhere and for other purposes than originally intended. *This is an advance over the water usages of most of the States,* and it is not denied that making water rights appurtenant to the tract irrigated will in some instances work a hardship, but it is believed that it is much better to risk the individual hardships which will inevitably occur under a provision of appurtenance than to risk the evils certain to result from unlimited authority to transfer water rights" (35 Cong. Rec. 6679 (1902)).

There is in California no statute making a water right perpetually inseverable from the land such as the Washington statute mentioned in *Ickes v. Fox,* 300 U.S. 82, 93-94 (1937). Thus even though under California law the place of use may be changed (Calif. Water Code § 1701), section 8 may forbid this in the case of project water. The connection between this and the enforcement of the acreage limitation is clear: Under the original Reclamation Act, when the United States sold "water rights" to individual water users (1) the water right could not be transferred by a nonexcess owner to an excess owner, and (2) those having water rights could not speculate with them apart from the land. Now that the pattern of contracting is be-

tween the United States and organizations of water users, the same objectives are met by the restriction on the delivery of water in the contracts with the organizations.

C. Even the broadest interpretation of section 8 does not support the judgments below.

The appellees argue that the United States "may secure the title permitted by state law, no more and no less" (Appellees' Br. 61). This is consistent with what the California court said:

> "Moreover, as we have already held, whatever title the United States has to the domestic waters of the state is limited by the trusteeship under which that title was acquired" (47 Cal.2d 642, 306 P.2d 851, AJS 56; see also 47 Cal.2d 628, 306 P.2d 842, AJS 35).

It should be noted that the trust is thus applied to a right acquired from private owners by purchase and eminent domain as well as to rights sought in unappropriated water applications filed by or with the state. It should also be noted that the trust compels the United States to make water deliveries through its projects even though forbidden by federal law.

The question, then, is whence came the trust imposed on all these categories of water rights. The California court said it comes from "the statutory law of this state", specifically California Water Code section 102:

> "The nature of the title to the waters here involved is further indicated by the statutory law

of this state. The title to these waters was mentioned at an early date in the amendment of section 1410 of the Civil Code in 1911 which provided that 'All water or the use of water within the State of California is the property of the people of the State of California' subject to appropriation and use in the manner prescribed by law. That provision in effect was carried into section 11 of the Water Commission Act of 1913 which provided that 'All waters flowing in any natural water course in the state excepting so far as such waters have been or are being applied to useful or beneficial purposes, upon, or in so far as such waters are or may be reasonably needed for useful, and beneficial purposes upon lands riparian thereto, or otherwise appropriated, is and are hereby declared to be public waters of the State of California and subject to appropriation in accordance with the provisions of this act.' (Stats. 1913, p. 1018.) The same provision was carried into the Water Code in 1943 as section 102" (47 Cal.2d 623-624, 306 P.2d 839, AJS 27-28).

Using this statute as the basis for the trust is so contrary to the previous decisions of the California court that the inference that the "trust" is being used merely as a device to discriminate against the United States must reluctantly be drawn.

These purported rights were declared to exist in defiance of what has previously been declared to be the law of California:

> "It is at least equally true, however, that every inhabitant of a state or district does not possess a potential right inherent in his habitancy, to di-

vert so much of the waters of a stream as he may have occasion to employ" (*Lux v. Haggin*, 69 Cal. 255, 313, 10 Pac. 674, 705 (1886)).

This was never contradicted in the previous discussions of what is now California Water Code section 102:

> "The water that pertained to or was contained in the lands of the state was already the property of the people when this amendment was adopted. The statute was without effect on any other property" (*San Bernardino v. Riverside*, 186 Cal. 7, 30, 198 Pac. 784, 794 (1921)).

> "The true reason for the rule that there can be no property in the *corpus* of the water running in the stream is not that it is dedicated to the public, but because of the fact that so long as it continues to run there cannot be that possession of it which is essential to ownership . . . Such right to the water of running streams as there is under the law is vested entirely in the several riparian proprietors" (*Palmer v. Railroad Commission*, 167 Cal. 163, 168, 138 Pac. 997, 999 (1914)).

Statutes like California Water Code section 102 were adopted in many western states in an effort to prevent the United States and its grantees from claiming riparian rights. These provisions "are not considered as vesting the state with any property right in the waters on their use but as affirming sovereign jurisdiction over them" (Bannister, *Federal Disposition of State Waters*, 28 Harv. L. Rev. 270, 288 (1915)). "In recent years a notion has sprung up

that running water is *res publica*; that it is owned by the state in exactly the same way, for example, that the state house is owned. This idea had its origin in the attempts of western states to make constitutional provision for the adoption of the appropriation system where it was feared federal patents had fastened the system of riparian rights upon considerable areas. All that these assertions of state ownership ever really achieved was to assert a state sovereignty with respect to water resources of the state, which really needed no assertion" (Roscoe Pound, Book Review, 28 Harv. L. Rev. 824 (1915)). Thus, framing an argument or a holding in terms of title is simply a circumlocution.

Actually, the trust as defined by the California court cannot be supported even as to previously unappropriated water. The appellees state: "In referring to the 'inchoate rights of present and potential water users of the state' (e.g. AJS 32), deriving from the applications filed by the State Director of Finance and the trust character of the waters, the Supreme Court of California was laying hold of no new or novel principle" (Appellees' Br. 33). This statement is so categorically wrong that it too supports the serious charge that it is an attempt to put forth a plainly untenable state ground merely to frustrate federal review (*Ward v. Love County*, 253 U.S. 17, 22-23 (1920)).

In *Palmer v. Railroad Commission*, 167 Cal. 163, 138 Pac. 997 (1914), the California Supreme Court was considering this very question whether the de-

scription, in a notice of appropriation of water by a public utility company, of places of intended use gave those owning land therein a right to demand water from the company:

> "The theory of the plaintiffs is that this designation of places of intended use constituted a dedication of the waters claimed in the notice to the public use for the benefit of all the territory embraced in the designated places . . . [and therefore] the persons owning lands within any of the places named have the right to demand a proportional share of such water for use upon such land" (*Palmer v. Railroad Commission*, 167 Cal. 163, 167, 138 Pac. 997, 998 (1914)).

On this the court held:

> ". . . the territory to which the water is dedicated is not necessarily the same as the places of intended use named in the notices" (*id.*, 167 Cal. at 174, 138 Pac. at 1001).

In ignoring this, the only state case in point, the California court has given further confirmation that the trust theory announced in the instant cases is a device contrived for this sole occasion.

The discriminatory nature of the trust appears also from the appellees' argument based on California Constitution, Article XIV, Section 3. They claim that this amendment prohibits the acreage limitation (Appellees' Br. 41).

The amendment seeks to encourage the beneficial use of waters "to the fullest extent of which they are capable." Appellees would twist the amendment to

mean that large uses are favored because they are a use of fuller extent than a small use. Not only would they eliminate the policy of the limitation, they would reverse it. But the sanction to achieve use of the "fullest extent" (apart from the curtailment of the remedies of riparians (p. 35 herein) is provided in the amendment itself:

> "the right to water . . . is and shall be limited to such water as is reasonably required for the beneficial use to be served. . . ."

It seems obvious by the appellees' argument that not only would the United States be denied the right to acquire water for its particular irrigation scheme, but that such denial would be discriminatory against the United States for that law never before has been used to say that one must irrigate a lot rather than a little (See *Reconstruction Finance Corp. v. Beaver County*, 328 U.S. 204, 210 (1946)).

D. The California court's interpretation of section 8 would subject reclamation law to repeal by state action.

The California court has read section 8 of the Reclamation Act of 1902 as if it requires a complete subordination of the balance of the reclamation laws to what the state laws happen to be from time to time. Thus it says:

> "Also carried into the Public Lands Code of the United States is the provision of the Reclamation Act of 1902 [§ 8] that state laws remain unaffected by later enactments" (47 Cal.2d 639, 306 P.2d 849, AJS 50-51).

Assuming that such an interpretation of section 8 is not unconstitutional as an improper delegation of federal legislative power (cf. *United States v. Sharpnack*, 355 U.S. 286, 2 L. Ed. 2d 282, 287, n. 9 (1958); Note, *The Federal Assimilative Crimes Act*, 70 Harv. L. Rev. 685, 688-691 (1957)), it nevertheless would negate much of the reclamation law passed since 1902. Despite the holding of the California court, it is unreasonable to the point of being grotesque to hold that an earlier federal law, section 8, forbids the United States to do what a later law says it must do (Omnibus Adjustment Act of 1926, § 46).

The true meaning of section 8 is obvious in the light of its history. It means that the United States will not assert the riparian rights it might have otherwise claimed, to the destruction of the appropriative system prevailing in whole or in part throughout the west. A corollary of this is that it will pay for rights valid under state law which are taken for federal purposes (*United States v. Gerlach Live Stock Co.*, 339 U.S. 725, 739 (1950)). But to say that the United States will adhere to the various appropriative systems existing under state law as a means of protecting the integrity of private property acquired under those systems, cannot be twisted into saying that the United States is disabled from acquiring by appropriation, purchase or eminent domain those rights which are required to operate federal projects in accordance with federal law.

III. CONGRESS HAS CONSTITUTIONAL POWER TO REQUIRE THE ACREAGE LIMITATION UNDER THE GENERAL WELFARE CLAUSE.

The appellees have sought to inject what they regard as a serious constitutional impediment to the interpretation that we urge of section 8 of the Reclamation Act as not forbidding the United States from applying the acreage limitation required by section 46 of the Omnibus Adjustment Act of 1926. They argue that Congress lacks the constitutional power to impose the limitation because the effect of the limitation is to "regulate, coerce and override state law" (Appellees' Br. 76). They contend that state law does not authorize an irrigation district to enter into the present contracts and does not permit the "unlimited title" to water needed by the United States to operate under the contracts. In effect, the appellees' position is that even if section 8 were not in the law, under the Constitution Congress could not impose the acreage limitation on the delivery of water from federal reclamation projects in California (Appellees' Br. 76).

This constitutional argument assumes that California law, of itself, forbids a district from contracting to receive water service from the United States subject to the acreage limitation. In our discussion of jurisdiction we pointed out that this assumption is not correct and that districts are authorized by state law to agree to the limitation if the United States can require it. The argument assumes also that the United States needs an "unlimited title" to water

rights in order to apply the limitation. If, as we contend, unlimited title really is not needed, because the limitation is a restriction on the use of federal project works and does not affect the property rights of "excess" landowners (see p. 39, n. 7 herein), this second assumption is also wrong.

The constitutional issue posed by the appellees is relevant only if "unlimited title" is necessary. The question, then, is: Can the United States, through exercise of the power of eminent domain, acquire the outstanding inchoate rights, which the California court held are possessed by the "excess" landowners, without exceeding the constitutional powers under which these reclamation projects have been built and are being operated?

The appellees answer this question in the negative on the grounds (1) that acquisition of such rights would "override" state law, and (2) that, acting under the general welfare clause of the Constitution, Congress is without authority to "override" state law. Both grounds are erroneous. As to the first ground, it has never been held that acquisition of property rights with payment of compensation constitutes the overriding of state law. To the contrary, the closest case in point, *United States v. Gerlach Live Stock Co.*, 339 U.S. 725, 739-740 (1950), which relates to the Central Valley Project, specifically upheld such action as constituting the respecting of state-recognized property rights which section 8 of the Reclamation Act demands. The appellees themselves acknowledged this when they stated with respect to the *Gerlach* case (Appellees' Br. 60):

"Because claimants' rights were protected under state law, *compensation* by the Federal Government was required for the damage done them."

As to the second ground, that state law may not be overridden when the United States acts under the general welfare power, the appellees again rely upon the holding in the *Gerlach* case. But the language they quoted (Appellees' Br. 64) destroys rather than supports their position:

". . . It was not until 1936 that this Court in United States v. Butler, 297 U.S. 1, declared for the first time, and without dissent on this point, that, in conferring power upon Congress to tax 'to pay the debts and provide for the common defense and general welfare of the United States,' the Constitution delegates a power separate and distinct from those later enumerated, and one not restricted by them, and that Congress has a substantive power to tax and appropriate for the general welfare, limited only by the requirement that it shall be exercised for the common benefit as distinguished from some mere local purpose. If any doubt of this power remained, it was laid to rest the following year in Helvering v. Davis, 301 U.S. 619, 640. Thus the power of Congress to promote the general welfare through large-scale projects for reclamation, irrigation, or other internal improvement, is now as clear and ample as its power to accomplish the same results indirectly through resort to strained interpretation of the power over navigation" (339 U.S. at 738).

Certainly, nothing in this indicates that the general welfare power is limited by the other powers delegated to the United States, and that it may not

be exercised in contravention of state law if state law is sought to be applied to prevent the execution of a policy designed to promote the general welfare (cf. Appellees' Br. 67). *Gerlach* stated that the power is:

> "limited only by the requirement that it shall be exercised for the common benefit as distinguished from some mere local purpose."

That the general welfare power, validly exercised, has the same attributes as any other federal power, i.e., that it too enjoys the benefit of the supremacy clause, can be inferred from the following cases: *Cleveland v. United States*, 323 U.S. 329, 333 (1945), which held that a federal housing project is entitled to immunity from local taxation as a sovereign activity of the United States; and *Berman v. Parker*, 348 U.S. 26 (1954), as applied outside the District of Columbia in *Starr v. Nashville Housing Authority*, 354 U.S. 916 (1957), which held that the power of eminent domain may be exercised for a general welfare purpose.

Kansas v. Colorado, 206 U.S. 46, 92 (1907), is now wrong if taken as indicating that the United States lacks a "definite grant of power [to] enter the territory of the states . . . and legislate in respect to improving by irrigation or otherwise the lands within their borders." It is disproven by the housing cases and *Gerlach*, which latter says expressly that the general welfare power is "a power separate and distinct from those later enumerated" (339 U.S. at 738).

An obvious question is why, in view of the long-standing arguments between state and nation in water

resource development, a state should now appear as an exponent of federal authority? The brief and realistic answer is that federal-state cooperation is inevitable if the states are to play a vital and constructive role. Even California, which has made more efforts in this field than most states (McKinley, *The Management of Water Resources Under The American Federal System*, reprinted in McMahon ed., Federalism Mature and Emergent, 328, 332, 334-335 (1955)), has been unable up to now to build water projects by itself. While increased state activity in the future is planned and hoped for, even if it occurs no one expects California to satisfy its growing water needs without substantial federal assistance. Responsible representation of the state's interest, therefore, requires preservation of the power and mechanics of federal cooperative activity and resistance to fanciful constitutional objections. A ruling that the general welfare power authorizes the program under attack in these cases would still leave the state free to go it alone if it chose to do so. But a contrary ruling could frustrate the only means which have thus far been effective to do the big jobs of water development that must be done.

IV. THE ACREAGE LIMITATION DOES NOT TAKE PROPERTY WITHOUT DUE PROCESS OR DENY EQUAL PROTECTION

The appellees, using the *Albonico* case as their medium, attack the constitutionality of the acreage limitation with the argument that under the contracts the excess land will be assessed *ad valorem* (Appellees' Br. 82), but will be denied the "right to have benefits in return for assessments" (Appellees' Br. 86).

The appellees have made an egregious error of fact. They say that in the *Albonico* case, "No evidence was introduced to show that the lands would be benefited by the operation of the district if a water supply was refused to them (R. 412)" (Appellees' Br. 79).

Actually, the Albonicos brought a proceeding before the board of directors of the Madera District to have their excess lands excluded under California Water Code sections 26700-26780 on the theory they were not benefited (R. 405). The board found that the excess lands would be benefited, despite the absence of surface deliveries (R. 406). The Albonicos sought judicial review of this finding. In the review proceedings and subsequent appeals, principal questions were the correctness of the trial court's finding of absence of benefit, the scope of its authority to review the finding of the district board on the question of benefit and the proper disposition of the case if the board's finding was not correct. (We have asked that the briefs in the *Albonico* case, which show the issues raised, be included to augment the record heretofore supplied.) Thus, quite contrary to the appellees' statement (Appellees' Br. 79), one of the very points in issue was whether there was evidence to show benefit despite absence of surface deliveries and whether the trial court's finding they rely on was correct. Because of the way the California Supreme Court disposed of the case, these questions have never been resolved.

In this attack on the acreage limitation, the appellees are not only going beyond the opinion of the

California Supreme Court, they are also in conflict with one of its key holdings. In the *Santa Barbara* case, the present appellees contended that lands not directly served with water would be deprived of property without due process of law if subjected to *ad valorem* taxes (47 Cal.2d 711, 306 P.2d 882-883, AJS 218). The California court rejected this argument and held on the authority of previous California cases that indirect benefits, such as the "improvement of neighboring and surrounding land and the consequent increase in the value of all land within the district," are a sufficient constitutional basis for the levy of *ad valorem* taxes (47 Cal.2d 712, 306 P.2d 883, AJS 220).

Moreover, land can be directly benefited without surface deliveries due to the improvement in ground water conditions which can result from project operations. Indeed, the very argument that the acreage limitation is impossible to enforce arises from the fact that ground water benefits may be available to all owners, large and small (Hearings before Senate Committee on Public Lands on S. 912, 80th Cong., 2d Sess. 1218-1222 (1944)). The Chief Engineer of the Madera District stated:

> "EXCESS LANDS WILL BENEFIT FROM SURFACE IRRIGATION
>
> "There appears to be no doubt, therefore that with introduction of surface irrigation and the consequent cessation of pumping by those using surface water, excess lands will receive direct benefits in the way of a higher water table, with consequent improvement in quality, plus lower pumping costs, and above all, reasonable assur-

ance that the water table will not fall to the danger point" (*Id.* 1221).

The contracts expressly take the possibility of underground benefits to large owners into account in standard clauses (R. 37, 213, 498, cf. 528, 561):

> "(b). If Project water furnished to the District pursuant to this contract reaches the underground strata of excess land owned by a large land owner who has not executed a recordable contract and the large land owner pumps such Project water from the underground, the District will not be deemed to have furnished such water to said lands within the meaning of this contract if such water reached the underground strata of the aforesaid excess land as an unavoidable result of the furnishing of Project water by the District to nonexcess lands or to excess lands with respect to which a recordable contract has been executed."

Of course, it is possible that the excess lands may not be benefited in the same degree as the lands receiving a surface supply. But the law provides for a special rate of assessments (Calif. Water Code § 25825) and assessment in accordance with benefits (Calif. Water Code § 23242). Thus, assuming that the method actually used in most districts of a combined *ad valorem* assessment and toll charge for water results in a disproportion of payments to benefits, the way is open to the excess landowners to have this corrected.

A complaint is made that the Albonicos paid their assessment for years but are now receiving no benefit

(Appellees' Br. 77, 78). Assuming the unlikely fact that they are receiving no benefits, they have no cause for complaint because they either had or have a remedy if it has not been barred by lapse of time. Irrigation district charges are generally considered special assessments (*San Diego v. Linda Vista Irr. Dist.*, 108 Cal. 189, 41 Pac. 291 (1895)). If the project which was to result in the benefit has been abandoned and no benefit is forthcoming, as the appellees seek to argue, an ordinary action will lie to recover the payments (*District of Columbia v. Thompson*, 281 U.S. 25 (1930); *Chapman v. Los Angeles*, 26 Cal.App.2d 186, 79 P.2d 128 (1938)).

The appellees have identified a number of other purported property rights which they contend are taken without due process from "excess" landowners under the acreage limitation (Appellees' Br. 83-84). Although they have listed "rights" which the California Supreme Court did not even mention in its opinions,[8] no detailed response to their argument is necessary in light of the discussion in our opening brief (pp. 52-54, 61-63).

However, certain factual errors should be noted. It is said, "The Albonicos further ascertained that:

> "'. . . the administrative procedure usually adopted has been to refuse to deliver water to any lands, excess or non-excess, until the owner of the excess land has executed a recordable contract agreeing to dispose of the excess.' (Land Ownership Survey on Federal Reclamation Proj-

[8]The "rights" listed as numbers (3), (4), and (5), Appellees' Br. 84.

ects, Department of Interior (1946), p. 47, Exh. 47 in Madera, Rep. Tr. 43.)" (Appellees' Br. 79).

In the Central Valley and Santa Barbara Projects an excess landowner will receive water for his non-excess lands whether he enters into a recordable contract or not. Any inference to the contrary from the statement quoted by the appellees is expressly negatived by the records herein and material quoted by the appellees themselves. The owner is allowed to designate his non-excess lands and receive water for them. And if he fails to make a designation it will be made for him (R. 39-40, 500-501; Appellees' Br., Appendix p. 2).

The appellees have persistently stated that the acreage limitation restricts the furnishing of "water or service from the district" (Appellees' Br. 85, 86) and "the district's water supply" (Appellees' Br. 87), and that the contract "precludes landowners from receiving state-controlled water for their lands in excess of arbitrarily prescribed limits" (Appellees' Br. 87). The important qualification, that only water or service *furnished through federally financed and constructed works* is so restricted, is not mentioned. This omission, of course, utterly distorts the effect of the limitation.

The appellees also stated that:

> ". . . the argument is sometimes used that lands which do not receive a direct benefit from the district operations nevertheless receive an indirect benefit by an increase in their value due to district operations. Such, however, is not the case

> under the contracts now before the Court, because the contracts specifically limit the sale price of 'excess land' to a price which does not reflect any present or prospective benefit that the land would receive by reason of the project, its works, or any water delivered therefrom. (R. 214)" (Appellees' Br. 86-87).

The record reference cited by the appellees does not support their statement. The contract provision which they referred to is as follows (R. 214):

> The following principles shall govern the appraisal [of excess land];
>
> "(i) No value shall be given such lands on account of [fol. 47] the existing or prospective possibility of securing water or service from the distribution system;"

There is nothing in this language which forbids the appraisal from taking into account the increased value resulting from the general improvement of property values in the surrounding area which may result from the project.

When the limitation is correctly understood, it is seen that it operates only to the extent that water delivery is desired by means of subsidized projects built with money belonging to all the people of the United States, to the end of distributing the project benefits widely and equitably. Thus, disappointing and distasteful as the limitation may be to owners of excess land, its compatibility with due process and equal protection cannot be doubted.

CONCLUSION.

For the reasons stated in our opening brief and in this brief, it is respectfully submitted that this court should take jurisdiction of these cases and that the judgments of the Supreme Court of California should be reversed.

Dated: April 16, 1958.

Respectfully submitted,

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(Appendix Follows.)

Appendix

SANTA BARBARA COUNTY WATER AGENCY ACT.

(Calif. Stats. 1945, c. 1501, p. 2780, as amended by Calif. Stats. 1949, c. 92, p. 18, 1 Deering's California Water Code Ann. Act 7303, West Calif. Water Code App. § 51).

SEC. 6.2

(1) All payments to the United States under any contract between the agency and the United States, including payments of interest and principal on bonds deposited with or transferred to the United States, shall be paid so far as possible from revenue other than that derived from agency taxes, unless otherwise provided by the contract or this act, and the balance, if any, of such payments shall be paid from revenue derived from annual taxes upon all taxable property within the agency assessable for agency purposes under the laws of the State, and the taxable property shall be and remain liable to be assessed and levied upon for the payments.

(2) Public land of the United States within the agency shall be subject to assessment and tax for all purposes of contracts with the United States to the extent provided for by the Act of Congress approved August 11, 1916 entitled "An act to promote reclamation of arid lands," or any other law which may hereafter be enacted by Congress in the same relation, upon full compliance therewith by the agency.

(3) All money collected in pursuance of the contract with the United States shall be paid into the

county treasury to the credit of the agency and held in a fund to be known as the "United States Contract Fund" to be used for payments due to the United States under the contract.

SEC. 10.1

If from any cause, the revenues of the agency shall be, or in the judgment of the board of directors are likely to be, inadequate to pay the expenses, costs, liabilities and indebtedness of the agency, the board of directors of the agency shall have the power in any year to levy an ad valorem tax upon all taxable property in the agency to pay the costs and expenses of said agency and to carry out any of the objects, purposes or powers of this act; provided, however, that the aggregate taxes or assessments levied under this act for any one fiscal year shall not exceed fifteen cents ($0.15) on each one hundred dollars ($100) of the assessed valuation of the taxable property in the agency exclusive of any tax levied to meet the bonded indebtedness of the agency and the interest thereon duly authorized by a vote of the electors of the agency, and exclusive of any special assessment levied to meet any indebtedness or contractual liability duly authorized by vote of the electors of the agency, and exclusive of any tax levied for the payment of any portion of any indebtedness represented by capital obligations underwritten by member units or represented by the amounts agreed to be paid by member units for any water or water supply to be furnished or sold such member units.

Said taxes shall be levied and collected together with, and not separately from, taxes for county purposes, and the revenue derived from said taxes shall be paid into the county treasury to the credit of the agency, and the board of directors shall have the power to control and order the expenditure thereof for said purposes.

confirmation" of the contract. (Ivanhoe: Clerk's Tr., Vol. 1, 50; Madera: Clerk's Tr., Vol. 1, 52; Santa Barbara: Clerk's Tr., Vol. 1, 113.)*

Presumably purporting to comply with Rule 15, 1(h) of the Rules of this Court, appellants have included in the appendices to the jurisdictional statement (herein cited as "app.") the opinions of the trial courts in the four cases, but have not included the findings of fact and conclusions of law entered by those courts. For such findings and conclusions, see Ivanhoe: Clerk's Tr., Vol. 2, 237-315; Madera: Clerk's Tr., Vol. 2, 422-541; Albonico: Clerk's Tr., 22-31; Santa Barbara: Clerk's Tr., Vol. 3, 681-705.

Under California law, it is the findings of fact and conclusions of law which control, not the trial court's opinion. See *Richter v. Walker*, 36 C.2d 634, 642; *Strudthoff v. Yates*, 28 C.2d 602, 615-616; *Stone v. L. A. County Flood Control Dist.*, 81 C.A.2d 902, 907. It will be noted that in each case the judgment entered by the trial court recites that it is based upon the court's findings of fact and conclusions of law and makes no reference to the court's prior opinion (app., 136-137, 158, 203, 227-228).

ARGUMENT

I. The Contracts Were Held Invalid Under California Law. The Judgment, in Each Case, Rests on an Adequate Non-Federal Basis and No Substantial Federal Question Is Presented.

Chief Justice Stone has stated the principle which, we submit, controls the instant cases, as follows:

> "* * * we have repeatedly held that where the judgment of a state court rests in part on a non-federal ground adequate to support it, this Court will not consider the correctness of the decision which the state

*The wording of this provision of the Santa Barbara contract varies slightly from the corresponding provisions of the Ivanhoe and Madera contracts, from which the above quotation is taken, but the sense is the same.

court also made of a federal question otherwise reviewable here." *Flournoy v. Wiener*, 321 U.S. 253, 262.

The reason for this rule

> "is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion." Mr. Justice Jackson, speaking for the Court in *Herb v. Pitcairn*, 324 U.S. 117, 125-126.*

The foregoing quotations summarize the holdings in these two cases, which are in accord with numerous other cases applying the same rule. *Murdock v. City of Memphis*, 20 Wall. 590, 636, 638; *Berea College v. Kentucky*, 211 U.S. 45, 53; *Enterprise Irrigation Dist. v. Canal Co.*, 243 U.S. 157, 163-164; *Lynch v. New York*, 293 U.S. 52, 54-55; *Fox Film Corp. v. Muller*, 296 U.S. 207; *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120; *Black v. Cutter Laboratories*, 351 U.S. 292.

In strict conformity with the foregoing authorities, the Court has held that "drawn in question" means brought forward and made the ground of decision. *Champion Lum-*

*Of the present members of the Court, Mr. Justice Frankfurter dissented in *Flournoy v. Wiener* and Mr. Justice Black and Mr. Justice Douglas dissented in *Herb v. Pitcairn*. Their dissents clearly did not go to the rule as stated in the passages above quoted, but rather to its application to the particular facts of these cases, both of which presented difficulties absent, we believe, from the instant cases.

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In the Supreme Court of the United States

OCTOBER TERM, 1956

THE IVANHOE IRRIGATION DISTRICT, et al., *Plaintiffs and Appellants,* vs. ALL PARTIES AND PERSONS, etc., *Defendants and Appellees.*	No. 993 122
THE MADERA IRRIGATION DISTRICT, et al., *Plaintiffs and Appellants,* vs. ALL PARTIES AND PERSONS, etc., *Defendants and Appellees.*	No. 994 123
THE MADERA IRRIGATION DISTRICT, et al., *Defendants and Appellants,* vs. PHILLIP and JANE E. ALBONICO, *Plaintiffs and Appellees.*	No. 995 124
THE SANTA BARBARA COUNTY WATER AGENCY, et al., *Plaintiffs and Appellants,* vs. ALL PARTIES AND PERSONS, etc., *Defendants and Appellees.*	No. 996 125

Motion to Dismiss Appeals and Supporting Brief

On Appeal from the Supreme Court of the State of California

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SUBJECT INDEX

	Page
Motion	1
Brief	2
Questions Presented	4
Statutory and Constitutional Provisions Involved	4
Statement of the Cases	7
Argument	8
I. The Contracts Were Held Invalid Under California Law. The Judgment, in Each Case, Rests on an Adequate Non-Federal Basis and No Substantial Federal Question Is Presented	8
II. Appellants' Efforts to Compound a Substantial Federal Question Are Baseless	17
III. Regarding the Appeal Papers as Petitions for Writs of Certiorari, the Writs Should Be Denied	23
Conclusion	24

TABLE OF AUTHORITIES CITED

Cases	Pages
Bank of America v. Parnell, 352 U.S. 29, 33	19
Berea College v. Kentucky, 211 U.S. 45, 53	9
Black v. Cutter Laboratories, 351 U.S. 292	9
Champion Lumber Co. v. Fisher, 227 U.S. 445, 450-452	9, 10
City of Pasadena v. Stimson, 91 Cal. 238	14
Enterprise Irrigation Dist. v. Canal Co., 243 U.S. 157, 163-164	9, 10
Flournoy v. Wiener, 321 U.S. 253, 262	8, 14, 22-23
Fox Film Corp. v. Muller, 296 U.S. 207	9, 10
Herb v. Pitcairn, 324 U.S. 117, 125-126	9
Ickes v. Fox, 300 U.S. 82, 94-95	20
Louis & Nash R. R. v. West. Un. Tel. Co., 237 U.S. 300, 303	14
Lynch v. New York, 293 U.S. 52, 54-55	9, 15
Merchants Nat. Bank v. Escondido Irr. Dist., 144 Cal. 329	15
Miller's Executors v. Swann, 150 U.S. 132, 136-137	14
Minnesota v. National Tea Co., 309 U.S. 551, 554	10
Murdock v. City of Memphis, 20 Wall. 590, 636, 638	9
Nebraska v. Wyoming, 325 U.S. 589, 611-616	20
Nebraska v. Wyoming, 295 U.S. 40, 43	20
New York v. Central Savings Bank, 306 U.S. 661	15
Radio Station WOW, Inc. v. Johnson, 326 U.S. 120	9, 10
Richter v. Walker, 36 C.2d 634, 642	8
Stone v. L. A. County Flood Control Dist., 81 C.A. 2d 902, 907	8
Strudthoff v. Yates, 28 C.2d 602, 615-616	8
United States v. Gerlach Live Stock Co., 339 U.S. 725	19, 20

STATUTES & RULES

	Pages
Act of July 10, 1952, 66 Stat. 560 (43 U.S.C. 666)	20
California Irrigation District Federal Cooperation Law (California Water Code, Division 11, Part 6, Ch. 2, Secs. 23175, et seq.)	11
California Irrigation District Law (California Water Code, Sections 20500-29978)	11
California Water Code:	
Section 102	5, 12
Section 104	6, 12
Section 105	6, 12
Section 1052	6, 12
Sections 20500-29978	11
Section 22250	6, 12, 13
Section 22680	12
Sections 23175, et seq.	11
Section 23200	7, 11, 13, 14
Federal Reclamation Act of 1902, 32 Stat. 390 (43 U.S.C. 372, 383) Section 8	13, 18, 19, 20
Judicial Code:	
Section 1257(1)	2, 4, 23
Section 1257(2)	23
Section 1257(3)	23
Section 2103	23
Rules of the Supreme Court of the U.S., Rule	
16, 1(b)	2
19, 1(a)	23
Santa Barbara County Water Agency Act (Calif. Stats. 1945, Ch. 1501, p. 2780 as amended by Calif. Stats. 1949, Ch. 12, p. 18, 1 Deering's Calif. Water Code Ann., Act 7303 (1954))	11
Second Validating Act of 1949, 1949 Stats., Ch. 782	15
Public Law 643, 84th Cong., 2d Sess., approved July 2, 1956, 70 Stat. 483-484:	
Section 2	18, 20
Section 4	18, 20

SENATE REPORTS

Pages

Senate Report No. 2241, 84th Cong., 2d Sess. 17

CONSTITUTIONS

California Constitution:
Article I, Section 11 ..... 5, 14
Article I, Section 13 ..... 5, 14
Article XIV, Section 3 ..... 4, 12, 13, 14

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OCTOBER TERM, 1956

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THE MADERA IRRIGATION DISTRICT, et al., *Plaintiffs and Appellants,* vs. ALL PARTIES AND PERSONS, etc., *Defendants and Appellees.*	No. 994
THE MADERA IRRIGATION DISTRICT, et al., *Defendants and Appellants,* vs. PHILLIP and JANE E. ALBONICO, *Plaintiffs and Appellees.*	No. 995
THE SANTA BARBARA COUNTY WATER AGENCY, et al., *Plaintiffs and Appellants,* vs. ALL PARTIES AND PERSONS, etc., *Defendants and Appellees.*	No. 996

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On Appeal from the Supreme Court of the State of California

MOTION

Appellees move to dismiss the appeals in the above four cases on the grounds, as to each case, that the judgment rests on an adequate non-federal basis and that the appeal does not present a substantial federal question.

BRIEF

The appeal in each case relies solely upon Section 1257(1) of the Judicial Code, which provides for review of a final judgment or decree of a state court by appeal "where is drawn in question the validity of a treaty or statute of the United States and the decision is against *its* validity." The expression "drawn in question", as the cases hereafter discussed establish, means brought forward and made the ground of decision. The Court from its foundation has adhered to the principle that it will not review judgments which rest on adequate state grounds or which (in the sense of Section 1257(1)) do not present a substantial federal question. The Court's present Rule 16. 1(b), pursuant to which the instant motion to dismiss is filed, gives full recognition to this principle.

The present appeals are from judgments involving the validity of certain contracts entered into between various California irrigation districts* and the Federal Government, acting by the Secretary of the Interior. Each contract provides that it is subject to confirmation by a court of competent jurisdiction. The United States is not here exerting any regulatory or coercive authority, such as taxing, or regulating interstate commerce; it has deliberately decided to proceed simply by means of contract, and with state-created agencies. Three of the cases were instituted, in state courts and under state statutes, for the purpose of obtaining confirmation of the contracts; the fourth, the *Alhonico* case, likewise brought in a state court and under a state statute, turned upon the validity of such a contract. The

*The term "irrigation district" or "irrigation districts", unless the context otherwise indicates, is used to include the Santa Barbara County Water Agency. For the purpose of this motion, separate attention need not be given certain subsidiary contracts between the Santa Barbara Water Agency and its so-called member units.

irrigation districts which were parties to the contracts (or purported contracts) were organized under, and were and are dependent for their powers wholly upon, state law. The United States did not appear or attempt to appear as a party in any of the cases. No lands of the United States are involved. Affirming (or affirming as modified) the trial court's judgments in three of the cases, and reversing in the fourth, the Supreme Court of California held in each case that the contract or contracts were invalid.

The basic determination of the court below was that the contracts in question were invalid when executed by a state agency. Consequently, the true issue was the right and power of a state agency to enter into contracts containing the terms and conditions of the instruments which were presented to the courts below for confirmation.

Prima facie, such confirmation proceedings, under state procedures, involving contracts to which state agencies are parties, do not present federal questions; on the contrary, they would appear to present a type of case peculiarly within the realm of state authority. We submit that decision in the instant cases was adequately rested on state statutory and decisional law and state constitutional provisions, including an important amendment to the California Constitution, approved in 1928, with respect to the use of state waters.

It is true here, as probably in all cases where the losing party strives for review in this Court by appeal from a state court, that the court below in the course of its opinions discussed federal statutory provisions. Such discussion, patently, does not give rise to an appealable federal question within the meaning of the Judicial Code or the decisions of this Court. Federal statutes were not brought forward and made the ground of decision; in every meaningful

sense, the court rested its decision upon an entirely adequate non-federal basis.

QUESTIONS PRESENTED

From the foregoing, it will be seen that the extensive "questions presented" set forth in the jurisdictional statement (pp. 6-11) are themselves question begging and of no value in deciding the present motion to dismiss. The questions for decision on this motion may be fairly stated, we believe, as follows:

> The Supreme Court of California held certain purported contracts entered into between state irrigation districts and the Federal Government, and which on their face were subject to confirmation in court proceedings, invalid because unauthorized by, and in conflict with, state statutory and constitutional and state decisional law. In the course of its opinions, the California Supreme Court discussed certain federal statutes and made comments concerning them. In the circumstances of these cases, was the validity of a statute of the United States thereby drawn in question within the meaning of Section 1257(1) of the Judicial Code, so that a substantial federal question is presented, or, to the contrary, do the judgments below rest on an adequate non-federal basis? Treating the appeal papers as petitions for writs of certiorari, are federal questions of substance presented sufficient to support the granting of the writs?

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

California Constitution, Article XIV, Section 3:

"It is hereby declared that because of the conditions prevailing in this State the general welfare requires

that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water. Riparian rights in a stream or water course attach to, but to no more than so much of the flow thereof as may be required or used consistently with this section, for the purposes for which such lands are, or may be made adaptable, in view of such reasonable and beneficial uses; *provided, however*, that nothing herein contained shall be construed as depriving any riparian owner of the reasonable use of water of the stream to which his land is riparian under reasonable methods of diversion and use, or of depriving any appropriator of water to which he is lawfully entitled. This section shall be self-executing, and the Legislature may also enact laws in the furtherance of the policy in this section contained."

California Constitution, Article I, Section 11:

"All laws of a general nature shall have a uniform operation."

California Constitution, Article I, Section 13:

"* * * No person shall be * * * deprived of * * * property without due process of law * * *"

California Water Code, Section 102:

"*Water State property: Acquisition of right to use water by appropriation.* All water within the State is

the property of the people of the State, but the right to the use of water may be acquired by appropriation in the manner provided by law."

California Water Code, Section 104:

"*Paramount interest of people in water: Determination as to conversion or control.* It is hereby declared that the people of the State have a paramount interest in the use of all the water of the State and that the State shall determine what water of the State, surface and underground, can be converted to public use or controlled for public protection."

California Water Code, Section 105:

"*Protection of public interest, and determination as to development.* It is hereby declared that the protection of the public interest in the development of the water resources of the State is of vital concern to the people of the State and that the State shall determine in what way the water of the State, both surface and underground, should be developed for the greatest public benefit."

California Water Code, Section 1052:

"*Unauthorized diversion or use a trespass: Institution of injunctive action.* The diversion or use of water subject to the provisions of this division other than as authorized in this division is a trespass, and the department may institute in the superior court in and for any county wherein such diversion or use is attempted appropriate action to have such trespass enjoined."

California Water Code, Section 22250:

"*Ratable apportionment of water among landowners.* All water distributed by districts for irrigation purposes shall except when otherwise provided in this article be apportioned ratably to each landowner upon the basis of the ratio which the last assessment against

his land for district purposes bears to the whole sum assessed in the district for district purposes."

California Water Code, Section 23,200:

"*Distribution and apportionment of water: Refusal of service to delinquent land.* All water, the right to the use of which is acquired by a district under any contract with the United States shall be distributed and apportioned by the district in accordance with the applicable acts of Congress, the rules and regulations of the Secretary of the Interior thereunder, and the provisions of the contract, and provision may be made in the contract for the refusal of water service to any or all land which may become delinquent in the payment of any assessment levied for the purpose of carrying out the contract."

STATEMENT OF THE CASES

For the purpose of this motion to dismiss, no elaborate statement of the cases appears necessary. We may accept, for this purpose, the summary set out in the jurisdictional statement (pp. 11-18) with the following qualifications.

The jurisdictional statement summarizes only isolated provisions of the contracts (jurisdictional statement, pp. 11-12, 14, 16-17). For a proper reading of the opinions of the visions of the contracts (jurisdictional statement, pp. 12, 14, 16-17). For a proper reading of the opinions of the Supreme Court of California, reference should be had to the full text of the contracts. (Ivanhoe: Clerk's Tr., Vol. 1, 15-51; Madera: Clerk's Tr., Vol. 1, 6-54; Santa Barbara: Clerk's Tr., Vol. 1, 73-113.)

Each contract provides that the contracting irrigation district shall

"file and prosecute to a final decree, including any appeal therefrom to the highest court of the State of California, in a court of competent jurisdiction a special proceeding for the judicial examination, approval, and

ber Co. v. Fisher, 2[illegible] U.S. 4[illegible], 450-453; *Minnesota v. National Tea Co.*, 309 U.S. 551, 554; and cases above cited. The mere fact that federal statutory or constitutional provisions are even passed upon and decided by the state court is immaterial for purposes of appeal if the decision finds adequate support in state law.

Thus, in the *Fox Film* case, cited above, the Court held:

> "The case, in effect, was disposed of before the federal question said to be involved was reached. *Chouteau v. Gibson*, 111 U.S. 200; *Chapman v. Goodnow*, 123 U.S. 540, 548. A decision of that question then became unnecessary; and whether it was decided or not, our want of jurisdiction is clear. 296 U.S. at p. 211.

When an adequate state ground is present, review may not be had in this Court even though the court below "summoned to its support an erroneous view of federal law." *Radio Station WOW, Inc. v. Johnson*, 326 U.S. at p. 129.

The application of the rule to the instant cases requires dismissal of the present appeals, as is manifest from an analysis of the decision of the Supreme Court of California. To this we now turn.

The jurisdictional statement (p. 2) correctly notes that the questions involved in these appeals are "closely related". The court below wrote its principal opinion in the *Ivanhoe* case (app., 1-64). Its much shorter opinions in the other three cases referred to the *Ivanhoe* opinion for a fuller statement of the controlling grounds of decision (app., 139, 183, 221). For purposes of this motion to dismiss, main attention may be given to the *Ivanhoe* decision.

The Ivanhoe Irrigation District, which is involved in the case of that name, and the Madera Irrigation District, which is involved in both the *Madera* and *Albonico* cases, were organized and exist under the California Irrigation District

Law.* The Santa Barbara County Water Agency, involved in the fourth case, was organized and exists under a California statute of 1945, as amended, known as the Santa Barbara County Water Agency Act.‡ That Agency's so-called member units are also districts or political subdivisions of the state, organized and existing under state law.† The powers, obligations and responsibilties of such districts and agencies are controlled at every point by state law. Irrigation districts are authorized to contract with the Federal Government, in accordance with California law, namely, the California Irrigation District Federal Cooperation Law.‡ Similarly the Santa Barbara County Water Agency Act, as amended, Section 6, authorizes, *inter alia*, contracts in accordance with the California Irrigation District Federal Cooperation Law.

One section of the Irrigation District Federal Cooperation Law, in turn, was considered by the court below to be of particular pertinence. It provides that water carried to an irrigation district under a contract with the United States shall be distributed and apportioned by the district "in accordance with the *applicable* acts of Congress, the rules and regulations of the Secretary of the Interior thereunder", etc. Water Code, Section 23200. (Emphasis ours.)

Reviewing the opinion in the *Ivanhoe* case, it will be seen the court notes at the outset that what is here involved is a *contract*, subject to *confirmation* in the instant proceed-

*California Water Code, Secs. 20500-29978.

‡Calif. Stats. 1945, Ch. 1501, p. 2780, as amended by Calif. Stats. 1949, Ch. 12, p. 18, 1 Deering's Calif. Water Code Ann., Act 7303 (1954).

†The Santa Barbara County Water Agency Act, as amended, cited in preceding footnote, Sec. 2(f) and (g).

‡California Water Code, Division 11, Part 6, Ch. 2, Secs. 23175, *et seq.*

ing. Although various matters must be considered as "necessarily incident thereto", the "judgment is limited to a determination of the validity of the contract" (app., 2-3).* The opinion throughout repeatedly and correctly sounds the note that the essential issue, to which all else is subordinate, is whether a consensual undertaking by a public agency of the state should be confirmed in a statutory proceeding established by state law. The court points out, citing the California Water Code, Section 22680, that "if the contract fails of confirmation on one material ground it must fail of confirmation as a whole" (app., 11).

Many pages of the opinion are devoted to the historical development of California law as to the use of water for irrigation purposes, with references to federal law by way of historical background (app., 13-21, 23-33). Emphasis is placed upon Section 3, Article XIV, of the California Constitution, as amended in 1928, which declares the policy of the state to be that its water resources shall be put to beneficial use to the fullest extent to which they are capable (app., 25-27). Stress is also laid upon Section 22250 of the State Water Code, which requires that water distributed by irrigation districts shall be apportioned ratably to each landowner upon the basis of the assessment made against him, without discrimination (app., 46-47). Several other sections of the State Water Code—i.e., Sections 102, 104, 105 and 1952—are cited and quoted for the proposition that, under state law, domestic waters for irrigation shall be put to their highest beneficial use and that water users, present and potential, have both vested and inchoate rights to secure the use of state waters on an equal and non-discriminatory basis (app., 27-29).

*The opinions are reported beginning at 47 A.C. 603, but for convenience the page references will be to the appendices to the jurisdictional statement.

It is concluded that "the title to the unappropriated domestic waters of the state is in the State of California in trust for the use and benefit of the beneficiaries of that trust" and that "the trust character of that title is anchored in the state by constitutional provisions, by statutes enacted in furtherance thereof, and by the decisional law of the state" (app., 32). In this connection, the court observed there was no dispute between any of the parties appearing in the litigation as to the nature of that title (app., 12, 21-22).

The decision plainly turns upon state law, including Section 23200 of the State Water Code, read in the light of Section 3 of Article XIV of the California Constitution and Section 22250 and other provisions of the Water Code relating to the appropriation, distribution and use of water by districts and the powers and obligations of irrigation districts. Section 23200, referred to above, permits districts to contract with the United States for a water supply and to distribute and apportion the water in accordance with the "applicable" acts of Congress. The court below discusses the Federal Reclamation Act of 1902 (app., 33-36) and expresses doubt that certain of its provisions were intended to extend to privately owned lands (app., 40-51). The court did not base decision, however, upon an interpretation of the federal act, but squarely held that if the federal act should be construed to apply to privately owned lands,

> "such a construction would obviously remove it from consideration as an 'applicable' law governing the execution of the contract in question. *Since its attempted application to the contract is unauthorized under the laws of this state it is necessarily not an 'applicable' law.*" (App., 50.) (Emphasis ours.)

A few lines later the court holds, referring to the section of the State Water Code in question:

"Section 23200 contemplates that *applicable* federal law shall apply." (App., 51.) (Emphasis the court's.)

Later, in considering other provisions of the contract the court refers to the controlling force of "the applicable water law of this state." (App., 56.)*

The opinion at several points refers to the constitutional protection afforded state water users against denial of due process and invasion of their right to equal and non-discriminatory treatment. (App., 27, 29-30, 32, 47, 48-49, 56, 59.) This protection stems from California water law, including Section 3 of Article XIV of the State Constitution, dealing with the use of state waters, and the relevant provisions of the State Water Code.

The reliance placed by the court upon due process and equality of treatment was clearly grounded upon the proposition that the state law governing irrigation districts, if improperly construed to authorize the instant contracts, would collide with Article I, Sections 11 (uniformity of treatment) and 13 (due process) of the California Constitution, as the record references cited in the next-preceding paragraph demonstrate. (See particularly app., 29-31, 47.) The court did not cite any federal cases, in this relation, and *City of Pasadena v. Stimson*, 91 Cal. 238, from which the

*Appellants suggest the proposition that where a state statute incorporates federal law, its interpretation itself becomes a federal question (jurisdictional statement, p. 36). Were this rule applicable, a starting point for discussion would be *Miller's Executors v. Swann*, 150 U.S. 132, 136-137, where the Court held: "The fact that the state statute and the mortgage refer to certain acts of Congress as prescribing the rule and measure of the rights granted by the State, does not make the determination of such rights a Federal question." To the same effect is *Louis & Nash R. R. v. West. Un. Tel. Co.*, 237 U.S. 300, 303. *Cf. Flournoy v. Wiener*, 321 U.S. 253, 260. However, the Court in the instant cases is not confronted with this so-called incorporation problem. The very question before the Supreme Court of California was what federal statutes the state law made applicable. This was, first and last, a state question.

court quoted on the equal protection point (app., 47), does not cite any federal cases.

There are only two references anywhere in the opinion to the Federal Constitution. The first appears during the course of a discussion of riparian rights, not here in issue, simply in the phrase "protected from unlawful encroachment by both state and federal Constitutions." (App., 27.) And the second, which is likewise preceded by a reference to the State Constitution, appears in a quoted passage from *Merchants Nat. Bank v. Escondido Irr. Dist.*, 144 Cal. 329, referring to "the protection of the provision of section 13 of article I of the state Constitution * * * that 'no person shall be * * * deprived of * * * property without due process of law,' and of the similar provision of Section 1 of the fourteenth Amendment to the constitution of the United States." (App., 29-30.)*

Finally, in concluding this phase of the discussion, reference should be had to the disposition made by the court below of the contention that the validity of the contracts under California law was established, in some fashion, by the Second Validating Act of 1949, enacted by the California Legislature. After showing that this Act did not, and was not intended to, validate the instant contracts, the court continued (app., 58-59):

> "Furthermore if the contract be deemed to include a utility type contract at the option of the United States, the Second Validating Act of 1949, or any validating act of the character of the one here relied upon by the attorney general, could not render such a contract valid. It is well settled that the Legis-

*Where the state court of highest resort is ambiguous in its treatment of both federal and non-federal questions, and the state ground is adequate to support the judgment, this Court presumes that the decision below was based upon the non-federal ground. *Lynch v. New York*, 293 U.S. 52, 54-55; *New York v. Central Savings Bank*, 306 U.S. 661. Although available, this rule need not be invoked in the present instance because no such ambiguity exists.

lature may ratify only what it could have theretofore authorized. It is obvious that the Legislature could not by a general ratifying statute breathe validity into a contract the effect of which would be to avoid *all of the laws of the state, both constitutional and statutory,* respecting the regulation and control of public utilities in this state. * * * In addition any validating act could not have confirmed the 160-acre limitation for the obvious reason that the Legislature could not have theretofore constitutionally authorized it." (Emphasis ours.)

Clearly, the decision below did not turn on the interpretation or validity of any federal statute, or upon the validity of any state statute under the Federal Constitution.

The simple fact, which appellants seemingly do their utmost to avoid, is that the Federal Government is here proceeding by means of contract—that is, consensual undertakings—with state districts and agencies. And, fully recognizing that the contract will not be effective unless the other contracting party has the requisite capacity and authority under state law, the Federal Government itself has conditioned the contract upon confirmation proceedings. Wholly consistent with this understanding, the Government elected not to respond as a party in any of the four cases. Its attitude seems to have been: Whether, on their side, the state districts or agencies have the requisite authority to enter into these contracts is a matter of state law, for the state courts to decide.

It appears contrary to the essential character of these proceedings and the subject matter of the contracts for appellants now to contend that the state courts do not have the final say, after all; but that the past litigation of seven and a half years is but prologue to complete review in this Court of the decision of the California Supreme Court as to California law.

II. Appellants' Efforts to Compound a Substantial Federal Question Are Baseless.

The foregoing discussion presents our affirmative case for the granting of the motion to dismiss. We now briefly consider two matters which it may be anticipated appellants will further argue in any reply.

Repayment and related features of the contracts. The court below discussed the debtor-creditor relationship contemplated by the contracts, questions as to the title to the works, the permanency of water rights and the ascertainment of the total amount for which the irrigation districts were liable. (App., 38-40, 52-56.) Appellants have presented these as substantial federal questions upon which decision was assertedly based. Jurisdictional statement, pp. 9-10, 22-24.

Although in this connection the court properly referred to federal statutes, it does not follow, on the authorities above and hereafter discussed, that this raised any federal question. The court, of necessity, was looking at the matter from the standpoint, not of federal right, but of irrigation district responsibility, fiscal and otherwise, under California law.

Another persuasive consideration, moreover, is noted by the court in a footnote to its opinion. (App., 39, fn. 3.) Public Law 643, 84th Cong., 2d Sess., approved July 2, 1956, 70 Stat. 483-484, which was enacted long after the instant contracts had been signed, and while the cases were pending before the court below, was obviously designed to correct some of the uncertainties—and inequities—now under discussion. See the Senate Report on the Bill, Senate Report No. 2241, 84th Cong., 2d Sess. The Act requires the Secretary of the Interior, "if the other contracting party so requests," to include repayment and other provisions in the contracts quite different from those in the contracts before

the court below and this Court. Section 2 of the Act gives the Secretary authority "to negotiate amendments to existing contracts * * * to conform said contracts to the provisions of the Act."

The irrigation districts now before the Court have not had an opportunity to avail themselves of the renegotiation procedure. Were the present contracts to be renegotiated under this Act, it is evident that they would be instruments quite different from those now before the Court. The validity of the instant contracts must obviously be judged on their present terms. The enactment of the Act of July 2, 1956 demonstrates, however, that the present out-moded provisions do not present a continuing problem, and hence a substantial question warranting review by the Court.

It is agreeable to add that Section 4 of the Act of July 2, 1956, incorporates the familiar Section 8 of the Reclamation Act of 1902, admonishing respect for state water law. This section is discussed *infra*, pp. 19-20.

The "ownership" of California waters. The court below, as we have noted, discussed the nature of the title to state waters available for irrigation. Referring to rights acquired by the United States for the use and benefit of the Central Valley Project (app., 19-21), the court stated that "when an outside party, such as the United States, by contract, legislation or otherwise, steps into the shoes of the state to administer that trust by the development, conservation and distribution of the trust res, it is bound by the same rules of law as surround and govern the State of California or any other purveyor of water of the state for the benefit of its water users" (app., 31). We emphatically believe this is a correct statement of the controlling law, both state and federal, but we deny that it raises any substantial federal question in the context of the instant cases.

To begin with, this statement raises no substantial federal question because it is palpably correct. Section 8 of the Reclamation Act of 1902, 32 Stat. 390, as amended, now codified as 43 U.S.C. 372, 383, has provided for many years as follows:

> "That nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: *Provided*, That the right to the use of water acquired under the provisions of this act shall be appurtenant to the land irrigated and beneficial use shall be the basis, the measure, and the limit of the right."

The application of this section to the Central Valley Project was recently before the Court in *United States v. Gerlach Live Stock Co.*, 339 U.S. 725. With reference to this section, the Court with "unclouded explicitness"* held:

> "By its command that the provisions of the reclamation law should govern the construction, operation, and maintenance of the several construction projects, Congress directed the Secretary of the Interior to proceed in conformity with state laws, giving full recognition to every right vested under those laws * * *. The governing water law of California must now be derived from a 1928 Amendment to its Constitution [Article

*We borrow this phrase from the Court's opinion in a different although related context. *Bank of America v. Parnell*, 352 U.S. 29, 33.

XIV, Section 3] * * * California's basic water law, to which the Federal Reclamation Act defers." 339 U.S. at pp. 734, 743, 751.

Nor was this a novel statement or application of the controlling law. To the same effect were the prior holdings in *Nebraska v. Wyoming*, 295 U.S. 40, 43; *Ickes v. Fox*, 300 U.S. 82, 94-95; *Nebraska v. Wyoming*, 325 U.S. 589, 614-616.

Section 8 of the Reclamation Act, carefully preserving the integrity of state water law, was reaffirmed in the congressional action of July 2, 1956, discussed above, pp. 17-18. The Court should also note the Act of July 10, 1952, which deals with any suit for the adjudication or administration of rights to the use of water when the United States is the owner of or is in the process of acquiring such rights by appropriation under state law, by purchase, by exchange, or otherwise. Where the United States is a necessary party to any such suit, the Act gives consent to its joinder. When so joined, the United States "shall (1) be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty, and (2) shall be subject to the judgments, orders, and decrees of the court having jurisdiction. * * *" 66 Stat. 560, 43 U.S.C. 666.

Secondly, no one appearing in this litigation has at any time denied that Section 8 of the Reclamation Act has at all times applied with full vigor to the Central Valley Project. This may account in part for the court's statements that there is no disagreement as to the nature of the title to state waters. (App., 12, 21-22.) The court rightly thought that the applicability of Section 8 presented no question—federal or substantial—and it was clearly correct in this assumption insofar as the instant litigation is concerned.

In this connection, the court early in its opinion (app., 8) correctly summarized a pertinent portion of the State's amended answer in the *Ivanhoe* case as follows, referring to certain applications for the appropriation of waters filed by the state and their subsequent assignment to the United States for the use and benefit of the Central Valley Project:

> "Paragraph VIII of the state's amended answer alleges that by virtue of the terms of the applications, the state has become and is the trustor of an express trust; that by the assignments the United States has become and is the trustee of that trust; that the landowners to be served from the works of the Central Valley Project, including the landowners of plaintiff district, have become and are the beneficiaries of that trust; that any and all claims or interests of the United States obtained by the proposed contract are held by the United States as such trustee as a part of a trust corpus or res for the use and benefit of the Central Valley Project and the landowners to be served water from the works of that project, and in particular the landowners of plaintiff District, that the State of California is entitled to be heard, among other things, as to all matters relating to the administration and execution of the trust by the United States and is entitled to require that the trustee administer the trust according to its true intent and meaning."

Paragraph VIII of the State's amended answer in the *Ivanhoe* case is to be found at pages 161-162, volume 1 of the clerk's transcript.

The short answer to the question of the "ownership" of the waters, however, is that the instant cases, in which the United States did not even appear as a party, do not directly put into issue the character of the Government's title to the waters in the sense of raising a substantial federal question.

If we were to assume that the determination of the court below relative to the ownership of the water otherwise constituted a substantial federal question, it is clear that the judgments of the California Supreme Court rest at least in part on a non-federal ground adequate to support them.

If this Court were to assume jurisdiction of these cases and determine that the California Supreme Court was in error regarding the ownership of the waters within the boundaries of that state, and even that the United States is the absolute owner in fee of the waters within the Central Valley Project and can condition or limit their use as it sees fit, still the judgments of the court below would stand and the contracts would of necessity be declared invalid.

The Supreme Court of the State of California, as we have seen, has determined that the provisions of the contracts are violative of California law, both statutory and constitutional, and that an irrigation district, being an agency of the state, cannot enter into a contract with the United States which contains such provisions.

We emphasize at the outset that in the instant litigation the Government is simply attempting to proceed by contract with public agencies which are creatures of the State of California. No regulatory or coercive power of the Federal Government is brought into play. A valid contract necessarily requires two contracting parties with capacity to make it. The highest court of the state has held that one of the parties, namely the state agency, lacks such power and, under the California Constitution, could not be granted such power by the Legislature. This is the fundamental point to which all argument eventually returns. No action of this Court, we submit, can provide California irrigation districts with powers which they lack. An opinion of this Court, in the words of *Flournoy v. Wiener*, 321 U. S. 253, 261-262,

would therefore "be advisory only, since there is nothing before" the Court on which it can "render a decision which would have any controlling effect on the rights of the parties."

III. Regarding the Appeal Papers as Petitions for Writs of Certiorari, the Writs Should Be Denied.

Section 2103 of the Judicial Code provides that when an appeal is improvidently taken from a state court and the proper mode of review is by way of certiorari, the appeal papers shall be regarded and acted on as a petition for the writ.

The burden of our argument in support of the motion to dismiss the appeals has been that the decision below rests on an adequate non-federal ground and that no substantial federal question is presented. In this regard, the test for certiorari, under Section 1257(3) of the Judicial Code, is the same as under Section 1257(1) and (2), relating to appeals. The cases cited under Points I and II, above, deal with both appeals and petitions for certiorari. No "federal question of substance" is presented within the sense of Rule 19, 1(a) of the Rules of this Court.

If, therefore, as we have endeavored to establish, the appeals should be dismissed, so likewise in these circumstances writs of certiorari should be denied.

CONCLUSION

The judgment below, as to each case, rests on an adequate non-federal basis; no substantial federal question is presented. The appeals should be dismissed, and writs of certiorari denied.

Respectfully submitted,

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June, 1957.

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*Solely for the purpose of this motion to dismiss, attorneys representing separate interests in the courts below have joined together in behalf of all appellees.

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In the Supreme Court of the United States

OCTOBER TERM, 1957

THE IVANHOE IRRIGATION DISTRICT, et al., *Plaintiffs and Appellants,* vs. ALL PARTIES AND PERSONS, etc., *Defendants and Appellees.*	No. 122
THE MADERA IRRIGATION DISTRICT, et al., *Plaintiffs and Appellants,* vs. ALL PARTIES AND PERSONS, etc., *Defendants and Appellees.*	No. 123
THE MADERA IRRIGATION DISTRICT, et al., *Defendants and Appellants,* vs. PHILLIP and JANE E. ALBONICO, *Plaintiffs and Appellees.*	No. 124
THE SANTA BARBARA COUNTY WATER AGENCY, et al., *Plaintiffs and Appellants,* vs. ALL PARTIES AND PERSONS, etc., *Defendants and Appellees.*	No. 125

On Appeal from the Supreme Court of the State of California

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Reply to Memorandum for the United States as Amicus Curiae in Support of Jurisdiction

On Appeal from the Supreme Court of the State of California

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INDEX

	Page
I. The Importance of the Decisions of the Supreme Court of California Does Not Establish the Existence of a Substantial Federal Question	2
II. The Contracts Were Held Invalid under California Law; No Substantial Federal Question Is Presented	3
Conclusion	5

CITATIONS

Cases

	Pages
Clackamas County, Oregon v. McKay, 226 F.2d 343, certiorari denied, 350 U.S. 904	4
United States v. Burnison, 339 U.S. 87	4
United States v. Gerlach Live Stock Co., 339 U.S. 725	3, 4

Statutes

Federal Reclamation Act of 1902, 32 Stat. 390 (43 U.S.C. 372, 383), Section 8	3, 4

In the Supreme Court of the United States

OCTOBER TERM, 1956

THE IVANHOE IRRIGATION DISTRICT, et al., *Plaintiffs and Appellants,* vs. ALL PARTIES AND PERSONS, etc., *Defendants and Appellees.*	No. 993
THE MADERA IRRIGATION DISTRICT, et al., *Plaintiffs and Appellants,* vs. ALL PARTIES AND PERSONS, etc., *Defendants and Appellees.*	No. 994
THE MADERA IRRIGATION DISTRICT, et al., *Defendants and Appellants,* vs. PHILLIP and JANE E. ALBONICO, *Plaintiffs and Appellees.*	No. 995
THE SANTA BARBARA COUNTY WATER AGENCY, et al., *Plaintiffs and Appellants,* vs. ALL PARTIES AND PERSONS, etc., *Defendants and Appellees.*	No. 996

Reply to Memorandum for the United States as Amicus Curiae in Support of Jurisdiction

On Appeal from the Supreme Court of the State of California

Appellees file this reply to the Solicitor General, the discussion under the numbered topics below answering the corresponding divisions of his memorandum.

I. The Importance of the Decisions of the Supreme Court of California Does Not Establish the Existence of a Substantial Federal Question.

Appellees, in their motion to dismiss the appeals and supporting brief, did not minimize the importance of these cases in confirming the integrity of California water law and in holding that state-created agencies lack the power, under the statutes and constitution of California, to enter into contracts, such as those presently involved, unauthorized by that law. Appellees' position in this regard was correctly noted by appellants' brief opposing our motion to dismiss (p. 13). But the importance of a decision under state law manifestly does not generate a question for review by this Court. The Solicitor General does not in terms argue that it does.

Counsel for the Bureau of Reclamation appeared as *amici curiae* in the Superior Court in the *Ivanhoe* case, as the memorandum notes (p. 3). No appearance or presentation was made by the United States or any of its officers at the trial of the other three cases. Of the three irrigation district contracts involved, the trial courts held the Ivanhoe and Madera contracts invalid, on the basis of extensive findings of fact and conclusions of law. (Appellees' Motion to Dismiss Appeals and Supporting Brief, p. 8.) Some three or more years elapsed between the entry of the trial courts' judgments and the decisions of the Supreme Court of California. During this period, the Federal Government was not heard from. Only after the State Supreme Court had decided the cases, in January 1957, did the Government reappear, this time in the name of the United States as *amicus curiae* in support of the petitions for rehearing. Its offer to the court below at that stage to "explain and clarify" the issues, including one matter which it then discovered

to be "of great constitutional importance", was duly declined.

The Government's record in these cases is suggestive of the "strange transaction" respecting California waters in which this Court found it had engaged in *United States v. Gerlach Live Stock Co.*, 339 U.S. 725 at pp. 741-742. Certainly the Government's long period of silence while these cases were before the California courts does not add persuasiveness to its present plea for review by this Court. The inference arises, we submit, that during this extended period the Government failed to participate because it deliberately—and correctly—recognized that the issues involved are essentially matters of state law.

II. The Contracts Were Held Invalid Under California Law; No Substantial Federal Question Is Presented.

The Solicitor General's memorandum under its Division II adds little, if anything, to the argument presented by him in support of the petitions for rehearing below. No attempt is made to analyze the opinions of the Supreme Court of California or to meet in detail our showing that the decisions rest on an adequate state ground.

Although referring to the *Gerlach* case, *supra* (Memorandum, p. 4), the Solicitor General does not mention Section 8 of the Reclamation Act, which carefully confirms the integrity of state water law. (See our Motion to Dismiss Appeals and Supporting Brief, pp. 13, 18, 19-20.) The claim of "discrimination" against the United States (Memorandum, p. 4) is both undocumented and unwarranted. Reference is made in this connection to water rights acquired by the United States by purchase and condemnation. Is it now contended that such rights were not acquired under congressional authorization, in implementation of the Cen-

tral Valley Project? In the *Gerlach* case, this Court held that such rights were so acquired, and accordingly were subject to Section 8 of the Reclamation Act 339 U.S. at pp. 727-728, 734-736, 741-742.

Clackamas County, Oregon v. McKay, 226 F.2d 343 (D.C. Cir.), certiorari denied, 350 U.S. 904, which is cited at page 4 of the memorandum, involved neither state waters nor the Reclamation Act. That case, which was also cited to the court below, is the second of the no more than two cases referred to in the memorandum.*

Like the Supreme Court of California, however, we may properly decline the Solicitor General's invitation to debate these cases on the basis of federal law. The Government's stated position is "that the provisions of the contracts * * *

---

*In view of the reliance placed upon the *Clackamas* case, it is surprising that the memorandum does not cite and discuss other cases, including, for example, *United States v. Burnison*, 339 U.S. 87. Holding that California probate law is controlling as to testamentary dispositions to the United States, the Court there said (pp. 90, 91, 94):

> "We have no doubt that the receipt of gifts, testamentary and non-testamentary, is within the ambit of federal powers. * * * The argument is that every authorized activity of the United States represents an exercise of its governmental power, and that therefore the power to receive property through a will is a governmental power. Since a state cannot interpose 'an obstacle to the effective operation of a federal constitutional power,' the Government argues a state cannot interfere with this power to receive. * * * But the United States' capacity to receive, even though called a 'right' or a 'power,' is not a 'law of the state.' As we have shown in the earlier discussion, that capacity cannot be magically transformed into something that must be enforced." (Footnotes in quotation omitted.)

Again (p. 91):

> The Government's "argument fails to recognize that the state acts upon the power of its domiciliary [irrigation district] to give [contract] and not on the United States' power to receive [contract]."

But we relegate these references to a footnote and do not pursue the point because, as restated in the text which follows above, it seems clear that federal law does not control the instant cases.

are compelled by the federal reclamation law * * *." (Memorandum, p. 3.) Even if it were true that federal law required the inclusion of such provisions in any contract which might be executed, it does not follow that federal law even purports to require the execution of the contract itself. In fact, it is not contended that the contracts themselves are "compelled" by federal law; nor is it contended that irrigation districts, which are state agencies, are "compelled" by federal law to execute the contracts when state law forbids such contracts by state agencies. Any such argument, of course, would be a contradiction in terms. Our jurisprudence does not speak of "compelled consent."

The critical fact, which the Government, like appellants, refuses to face up to, is that the ultimate issue in these cases was simply the validity of certain consensual undertakings; and that they could not and cannot be held valid unless one of the contracting parties, the state agency, has the authority under state law to enter into them.

It is the Supreme Court of California which speaks with final authority on this issue.

CONCLUSION

The motion to dismiss the appeals should be granted.

Respectfully submitted,

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July, 1957.

SUBJECT INDEX

	Pages
Opinions Below	1
Jurisdiction	2
Constitutional and Statutory Provisions Involved	3
Questions Presented	7
Statement of the Cases	8
Summary of Argument	21
Argument	26
I. This Court Should Refuse Jurisdiction Because the Judgment, in Each Case, Rests on an Adequate Non-Federal Basis and No Substantial Federal Question Is Presented	29
A. Where the judgment rests on an adequate non-federal basis this Court will not take jurisdiction	29
B. The judgments of the Supreme Court of California are based on state, not federal, law	30
1. The Ivanhoe Decision	30
The critical issue in the case	30
Grounds of invalidity of the contract	31
Application of California law concerning the use of state waters and the powers of irrigation districts	32
Application of California Constitutional provisions	40
2. The Decisions in the Madera, Albonico and Santa Barbara Cases	43
C. Conclusion as to the decisions below	46
II. Federal Law Leaves to State Jurisdiction the Capacity of Irrigation Districts to Contract and the Control, Appropriation, Use and Distribution of Water for Irrigation Purposes	47
A. The federal statutes involved	47

Pages

B. Congress has not sought to impose terms and conditions except to the extent that they may be validly accepted by state irrigation districts in accordance with state law 49

C. The decisions of this Court confirm that it is the Congressional policy to leave irrigation matters within state jurisdiction 53

D. Appellants' contentions, if adopted, would give no force or effect to Section 8 of the Reclamation Act 60

III. The Available Federal Constitutional Powers Are Ineffective to Require Validation of the Contracts by Force of Federal Law 63

A. The Congressional power to legislate in connection with the Central Valley Project and the Cachuma Unit is under the Welfare Clause of the Federal Constitution 63

B. The Power of Congress to act under the Welfare Clause is Limited 67

C. Conclusion 74

IV. The Acreage Limitation Provisions of the Contracts Result in a Denial of Due Process and Equal Protection Under the Fifth and Fourteenth Amendments 76

A. The provisions contained in the contracts 76

B. The acreage limitations are unworkable, unreasonable and arbitrary when applied to an established agricultural economy 80

Conclusion 91

Appendix ..... App. 1-4

Pages

Alameda County v. United States, 124 F.2d 611 (9th Cir.) 53, 54
American Communications Assn. v. Douds, 339 U.S. 382 91
Ashwander v. Tennessee Valley Authority, 297 U.S. 288 ..... 24, 70, 71

Berea College v. Kentucky, 211 U.S. 45 30
Black v. Cutter Laboratories, 351 U.S. 292 30
Butte Co. W. U. Assn. v. Rd. Commission, 185 Cal. 218 40
Byington v. Sacramento Valley Etc. Co., 170 Cal. 124 34

California-Oregon Power Co. v. Beaver Cement Co., 295 U.S. 142 ..... 24, 56
Clackamus County, Oregon v. McKay, 226 F.2d 343 (D.C. Cir.), certiorari denied, 350 U.S. 904 75
City of Pasadena v. Stimson, 91 Cal. 238 42

Enterprise Irrigation Dist. v. Canal Co., 243 U.S. 157 30

Fallbrook Irrigation District v. Bradley, 164 U.S. 122 ..... 84, 87
Federal Power Commission v. Niagara Mohawk Power Corp., 347 U.S. 239 59
Flournoy v. Wiener, 321 U.S. 253 ..... 23, 29, 38, 46
Fox Film Corp. v. Muller, 296 U.S. 207 ..... 30, 37

Herb v. Pitcairn, 324 U.S. 117 29
Hopkins Savings Assn. v. Cleary, 296 U.S. 315 ..... 71, 72

Ickes v. Fox, 300 U.S. 82 ..... 24, 57, 58
Ickes v. Fox, 85 F.2d 294 (D.C. Cir.) 57
In re Owl Creek Irr. Dist., 71 Wyo. 30, 71 Wyo. 70 88
Inyo Cons. Water Co. v. Jess, 161 Cal. 516 33

Jenison v. Redfield, 149 Cal. 500 ..... 83, 84

Kansas v. Colorado, 206 U.S. 46 ..... 24, 56, 64, 65, 66, 71

Leavitt v. Lassen Irr. Co., 157 Cal. 82 40
Lindsay-Strathmore I. Dist. v. Superior Ct., 182 Cal. 315 84
Louis & Nash R. R. v. West. Un. Tel. Co., 237 U.S. 300 38
Lynch v. New York, 293 U.S. 52 ..... 30, 42

Pages

Mason Co. v. Tax Comm'n., 302 U.S. 186 ..... 24, 55, 56, 66
Merchants Nat. Bank v. Escondido Irr. Dist., 144 Cal. 329 42
Merritt v. City of Los Angeles, 162 Cal. 47 33
Miller's Executors v. Swann, 150 U.S. 132 38
Murdock v. City of Memphis, 20 Wall. 590 30

Nebraska v. Wyoming, 295 U.S. 40 56
Nebraska v. Wyoming, 325 U.S. 589 ..... 58, 75
New York v. Central Savings Bank, 306 U.S. 661 42
Norwood v. Baker, 172 U.S. 269 88

Oklahoma v. Civil Service Comm'n., 330 U.S. 127 72

Perkins v. Lukens Steel Co., 310 U.S. 113 72
Port of Seattle v. Oregon & W. R. R., 255 U.S. 56 58
Priebe & Sons v. United States, 332 U.S. 407 53

Radio Station WOW, Inc. v. Johnson, 326 U.S. 120 30
Richter v. Walker, 36 C.2d 634 2

Shelley v. Kraemer, 334 U.S. 1 88
Steward Machine Co. v. Davis, 301 U.S. 548 73
Stone v. L. A. County Flood Control Dist., 81 C.A. 2d 902 2
Strudthoff v. Yates, 28 C.2d 602 2

United States v. Bekins, 304 U.S. 27 73
United States v. Burnison, 339 U.S. 87 ..... 73, 74
United States v. Butler, 297 U.S. 1 ..... 24, 69, 70
United States v. Carmack, 329 U.S. 230 68
United States v. Gerlach Live Stock Co., 339 U.S. 725 ..... 12, 24, 52, 59, 60, 63, 64, 65
United States v. San Francisco, 310 U.S. 16 73
United States v. Standard Rice Co., 323 U.S. 106 53

Yick Wo v. Hopkins, 118 U.S. 356 88

CONSTITUTIONAL PROVISIONS

	Pages
California Constitution:	
Article I, Section 11	4, 23, 42, 45
Article I, Section 13	4, 23, 42, 45
Article XIV, Section 3	3, 32, 41, 44, 59
Article XVII, Section 3	41
United States Constitution:	
Article I, Section 8	64, 67
Article IV, Section 3	65, 66, 67, 70
Article VI	73
Fifth Amendment	8, 25, 27, 76, 85
Fourteenth Amendment	8, 25, 27, 76, 85

STATUTES

CALIFORNIA:	
California Stat. 1st Ex. Sess. 1956, Ch. 52	15
California Stat. 1953, Ch. 24 of the 1952 Regular Session and Ch. 4 of the 1952 First Extraordinary Session	38
California Stat. 1933, Ch. 1042	16, 17
California Public Utilities Code:	
Div. 1	40
California Water Code:	
Section 102	4, 33
Section 104	4, 33
Section 105	4, 33
Section 120	13
Section 175	13
Section 201	15
Section 202	15
Section 1052	5, 15, 33
Section 1225	15
Section 1253	15
Section 1375	15
Section 1450	15
Section 1600	15
Section 11100	16
Sections 11225-11226	17

Pages

Sections 11230-11231 17
Sections 11235-11236 17
Section 11400 16
Sections 11451-11452 17
Section 11500 17
Sections 20500-29978 8
Section 20527 83
Section 20700 87
Section 22250 ..... 5, 33, 44, 83
Section 22252 ..... 33, 44, 83
Section 22680 31
Section 23175 9
Section 23200 ..... 5, 22, 37, 38, 39
Section 23223 32

California Water Commission Act, Stat. 1913, Ch. 586 14

Santa Barbara County Water Agency Act, Calif. Stat. 1945, Ch. 1501, p. 2780, as amended by Calif. Stat. 1949, Ch. 12, p. 18, 1 Deering's Calif. Water Code Anm., Act 7303 (1954) 8, 9

FEDERAL:

Act of July 2, 1956, 70 Stat. 483, 43 U.S.C. 485h-1-5 ..... 40, 49

Act of July 10, 1952, 66 Stat. 549, 43 U.S.C. 666 49

Act of August 9, 1912, 37 Stat. 265, as amended, 43 U.S.C. 544 ..... 81, 86

Acts of 1866, 1870 and Desert Land Act of 1877, 43 U.S.C. 321, 661 ..... 48, 56

Judicial Code:
Section 1257(1) 2, 7
Section 2103 3

Omnibus Adjustment Act of 1926, Section 46, 44 Stat. 636, 43 U.S.C. 423e 2, 6, 47, 49, 50, 51

Reclamation Act of 1902, 32 Stat. 388:
Section 8, 43 U.S.C. 372, 383 ..... 6, 22, 23, 28, 36, 40, 48, 49, 51, 56, 58, 60, 61, 62, 63
Section 7, 43 U.S.C. 421 61

Pages

Reclamation Project Act of 1939, 53 Stat. 1187, as amended:
Section 9(c), 43 U.S.C. 485h(c) 2, 6, 47
Section 9(d); 43 U.S.C. 485h(d) 6, 47
Section 9(e), 43 U.S.C. 485h(e) 2, 6, 47

Submerged Lands Act, Section 3, 67 Stat. 29, 43 U.S.C. 1311 49

MISCELLANEOUS

American Law Institute, Restatement of the Law of Contracts, Section 18 53

American Law Institute, Restatement of the Law of Conflict of Laws, Section 165 53

25 Ops. Cal. Atty. Gen. 8 35

Senate Report No. 2241, 84th Cong., 2d Sess. 40

Trelease, "Government Ownership and Trusteeship of Water," 45 Cal. L. Rev. 638 35

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Brief for Appellees

OPINIONS BELOW

The opinions of the Supreme Court of California in the four cases, Nos. 122-125 (Appendices to Jurisdictional Statement, pp. 1, 139, 180, 205), are reported at 47 C. 2d 597, 306 P. 2d 824 (No. 122); 47 C. 2d 681, 306 P. 2d 886 (No. 123); 47 C. 2d 695, 306 P. 2d 894 (No. 124); and 47 C. 2d 699, 306 P. 2d 875 (No. 125).

The Appendices to Jurisdictional Statement (herein cited as AJS) include the opinions of the trial courts in these four cases but do not include their findings of fact and conclusions of law. For such findings and conclusions, see R. 111 (No. 122), R. 297 (No. 123), R. 411 (No. 124), and R. 603 (No. 125).

Under California law, it is the findings of fact and conclusions of law which control, not the trial court's opinion. See *Richter v. Walker*, 36 C. 2d 634, 642; *Strudthoff v. Yates*, 28 C. 2d 602, 615-616; *Stone v. L. A. County Flood Control Dist.*, 81 C. A. 2d 902, 907. It will be noted that in each case the judgment entered by the trial court recites that it is based upon the court's findings of fact and conclusions of law and makes no reference to the court's prior opinion (R. 176, 380, 419, 621).

JURISDICTION

The appeal in each case relies solely upon Section 1257(1) of the Judicial Code (R. 177, 398, 422, 650), which provides for review of a final judgment or decree of a state court by appeal "where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity." Specifically, appellants contend (Br., p. 3) that the appealable issues involve the validity of Section 46 of the Omnibus Adjustment Act of 1926, 44 Stat. 636, 43 U.S.C. 423e, and Section 9(c) and (e) of the Reclamation Project Act of 1939, 53 Stat. 1187, as amended, 43 U.S.C. 485h(c) and (e). Appellants are forced to contend that the decisions below turned on a holding "against" the "validity" of these provisions.

Appellees filed a motion to dismiss the appeals and a supporting brief, contending that the judgment in each case rests on an adequate non-federal basis and that no

substantial federal question is presented. Similarly, appellees contended that, treating the appeals as petitions for certiorari as required by Section 2103 of the Judicial Code, no federal question of substance is presented sufficient to support the granting of the writ. On October 14, 1937 this Court entered an order deferring further consideration of the question of jurisdiction to the hearing of the cases on the merits. (R. 656.)

Appellees hereby renew their objections to jurisdiction, and devote Point I of the Argument, *infra*, p. 29, to this question.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

California Constitution, Article XIV, Section 3:

> "It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water. Riparian rights in a stream or water course attach to, but to no more than so much of the flow thereof as may be required or used consistently with this section, for the purposes for which such lands are, or may be made adaptable, in view of such rea-

sonable and beneficial uses; *provided, however*, that nothing herein contained shall be construed as depriving any riparian owner of the reasonable use of water of the stream to which his land is riparian under reasonable methods of diversion and use, or of depriving any appropriator of water to which he is lawfully entitled. This section shall be self-executing, and the Legislature may also enact laws in the furtherance of the policy in this section contained."

California Constitution, Article I, Section 11:

"All laws of a general nature shall have a uniform operation."

California Constitution, Article I, Section 13:

"* * * No person shall be * * * deprived of * * * property without due process of law * * *"

California Water Code, Section 102:

"*Water State Property: Acquisition of right to use water by appropriation.* All water within the State is the property of the people of the State, but the right to the use of water may be acquired by appropriation in the manner provided by law."

California Water Code, Section 104:

"*Paramount interest of people in water: Determination as to conversion or control.* It is hereby declared that the people of the State have a paramount interest in the use of all the water of the State and that the State shall determine what water of the State, surface and underground, can be converted to public use or controlled for public protection."

California Water Code, Section 105:

"*Protection of public interest, and determination as to development.* It is hereby declared that the protection of the public interest in the development of the

water resources of the State is of vital concern to the people of the State and that the State shall determine in what way the water of the State, both surface and underground, should be developed for the greatest public benefit."

California Water Code, Section 1052:

"*Unauthorized diversion or use a trespass: Institution of injunctive action.* The diversion or use of water subject to the provisions of this division other than as authorized in this division is a trespass, and the department may institute in the superior court in and for any county wherein such diversion or use is attempted appropriate action to have such trespass enjoined."

California Water Code, Section 22250:

"*Ratable apportionment of water among landowners.* All water distributed by districts for irrigation purposes shall except when otherwise provided in this article be apportioned ratably to each landowner upon the basis of the ratio which the last assessment against his land for district purposes bears to the whole sum assessed in the district for district purposes."

California Water Code, Section 23200:

"*Distribution and apportionment of water: Refusal of service to delinquent land.* All water, the right to the use of which is acquired by a district under any contract with the United States shall be distributed and apportioned by the district in accordance with the applicable acts of Congress, the rules and regulations of the Secretary of the Interior thereunder, and the provisions of the contract, and provision may be made in the contract for the refusal of water service to any or all land which may become delinquent in the payment of any assessment levied for the purpose of carrying out the contract."

Reclamation Act of 1902, Section 8, 32 Stat. 388, 43 U.S.C. 372, 383:

> "That nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this Act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof; *Provided*, That the right to the use of water acquired under the provisions of this Act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right."

Omnibus Adjustment Act of 1926, Section 46, 44 Stat. 636, 43 U.S.C. 423e:

> "No water shall be delivered upon the completion of any new project or new division of a project until a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or irrigation districts organized under State law * * * and the execution of said contract or contracts shall have been confirmed by a decree of a court of competent jurisdiction."

Reclamation Project Act of 1939, Section 9(c), (d) and (e), 53 Stat. 1187 as amended, 43 U.S.C. 485h(c), (d) and (e).[1]

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1. Additional statutes pertinent to the cases are cited throughout the brief.

QUESTIONS PRESENTED

1. The Supreme Court of California held invalid certain purported contracts entered into between state irrigation districts[2] and the Federal Government, and which on their face were subject to confirmation in court proceedings, because unauthorized by, and in conflict with, state constitutional, statutory and decisional law. The court held that the irrigation districts lacked the capacity under state law to enter into such contracts and that their subject matter, the use of water for irrigation purposes, was controlled by state law. The court's opinions pointed to federal law as confirming the jurisdiction of the states in these matters. In the circumstances of these cases, was the validity of a statute of the United States thereby drawn in question within the meaning of Section 1257(1) of the Judicial Code, so that a substantial federal question is presented, or, to the contrary, do the judgments below rest on an adequate non-federal basis? Treating the appeal papers as petitions for writs of certiorari, are federal questions of substance presented sufficient to support the granting of the writs?

2. Assuming that substantial federal questions are presented, was the court below correct in its view that federal law leaves to state jurisdiction the capacity of state irrigation districts to contract, and the control, appropriation, use and distribution of water for irrigation purposes? Under the Federal Constitution could Congress, even if it elected to do so, override state jurisdiction in these matters?

3. If federal and state law purported to authorize the instant contracts, would landowners within the contracting districts be deprived of property without due process of

2. The term "irrigation district" or "irrigation districts", unless the context otherwise indicates, is used to include the Santa Barbara County Water Agency and its member units.

law and denied the equal protection of the laws contrary to the Fifth and Fourteenth Amendments to the Constitution of the United States?

STATEMENT OF THE CASES

The trial courts made detailed findings of fact (R. 111, 297, 411 and 603), none of which has at any time been challenged by appellants.

The Ivanhoe Irrigation District and the Madera Irrigation District were organized and exist under comprehensive state legislation, known as the California Irrigation District Law, first enacted some 70 years ago. California Water Code, Sections 20500-29978. The Madera district, in fact, was organized in 1920 as a successor to a district organized in 1888. These districts are within the area of the Central Valley Project and receive supplemental water from it. (R. 114-117, 300.) Both of these districts were specifically designated by the State of California in 1935 for the use of Project water. (R. 126-127, 316-317.)

The Santa Barbara County Water Agency was organized and exists under a California statute of 1945, as amended, known as the Santa Barbara County Water Agency Act. Calif. Stat. 1945, Ch. 1501, p. 2780, as amended by Calif. Stat. 1949, Ch. 12, p. 18, 1 Deering's Calif. Water Code Ann., Act 7303 (1954). That Agency's so-called member units are also districts or political subdivisions of the state, organized and existing under state law. The Santa Barbara County Water Agency Act, as amended, Section 2(f) and (g). This Agency and its member units, consisting of the City of Santa Barbara and the Carpenteria, Goleta, Montecito and Summerland County Water Districts, secure supplemental water from the Cachuma Unit of the Santa Barbara County Project. (R. 603, *et seq.*)

The powers, obligations and responsibilities of such districts and agencies are controlled at every point by state law. Irrigation districts are authorized to contract with the Federal Government, in accordance with and within the limits of California law, namely, the California Irrigation District Federal Cooperation Law, California Water Code, Division 11, Part 6, Ch. 2, Section 23175, *et seq.* The Santa Barbara County Water Agency Act, as amended, Section 6, authorizes, *inter alia*, contracts in accordance with the California Irrigation District Federal Cooperation Law.

The Madera Irrigation District immediately after its formation in 1920 acquired the dam-site at Friant, California, on which Friant Dam is now constructed, and also acquired applications to appropriate water of the San Joaquin River which were filed on behalf of the district prior to its formation. (R. 220, 320-321.) These applications to appropriate San Joaquin River water are the earliest in time and priority of any of the applications referred to in these cases. On May 24, 1939 the district entered into a contract with the United States (R. 220) whereby the dam-site and the applications to appropriate water were transferred to the United States and wherein the United States agreed to furnish the district a supply of water, from Friant Dam through the Madera Canal, consisting of 270 thousand acre feet per annum.

The Ivanhoe, Madera and Santa Barbara Districts thereafter entered into contracts with the United States, acting by the Bureau of Reclamation, which for present purposes may be treated as substantially identical. The Santa Barbara County Water Agency, in turn, entered into contracts with its five member units. The first three contracts referred to and the contracts between the Santa Barbara County Water Agency and the City of Santa Barbara and the Mon-

tecito County Water District, which are typical of the latter class of contracts, are included in the printed record. (R. 12, 185, 477, 505, 537.)

Each contract requires that its validity shall be confirmed in court proceedings. Also, each contract requires the irrigation district involved to refuse water for irrigation purposes to land in excess of 160 acres held in single ownership unless the owner complies with burdensome conditions including sale of such "excess" land within a stipulated period not in excess of a price in the fixing of which he has no voice. Furthermore, the contract specifically prohibits delivery of water or other service by the district to any "excess" land which is sold by the owner at a price in excess of that approved by the Secretary of the Interior. For the procedure imposed by the Bureau of Reclamation, see its letter to Courtney McCracken, dated November 1, 1949, Appendix to this Brief. This letter restated the restrictions above mentioned, and requested designation of McCracken's non-"excess" land within thirty days. The contracts do not purport to assure a permanent water right; they run for 40 years, but with no provision for renewal.[3] The amounts charged for water include a capital component, but the contracting state district, agency or unit is not informed as to how much this is or as to when, if ever, the project will have been paid for. The contracts are further discussed under Point I of the Argument.

In accordance with California procedure, the contracts were submitted to the California Districts Securities Commission. Although approving the contracts, the Commission voiced doubts both as to their fairness and legality, but

3. The Madera contract refers to an option which may be exercised by the district for a continuation of the water supply provided in the contract of May 24, 1939. (R. 192, Para. 4.)

pointed out that at least the latter was for the determination of the courts. (R. 117-118, 302.)

Confirmation of these contracts was resisted by ninety-four landowners within the contracting districts, including both "excess" and non-"excess" owners. (R. 153-156, 298, 407, 411, 603.) Objection was made to the contracts on the grounds, among others, that they required discrimination against landowners who had faithfully supported the irrigation district of which they were members in the past and to whom the district owed a fiduciary responsibility;[4] as well as on the ground that the contract proceeded on the basis that the United States "owned" the water and failed to recognize a permanent water right in the users, contrary to state law. The Supreme Court of California held the contracts invalid on these grounds. (*Infra*, p. 31.)

The fourth case (No. 124) is not a validation proceeding although its outcome hinged upon the determinations of invalidity in the *Madera* proceeding (No. 123). In this case (No. 124) Phillip and Jane Albonico, owners of 1260 acres within the Madera Irrigation District, brought suit in the state court for a writ of mandate to compel the Madera district directors to exclude their land from the district in view of the provisions of the contract between the district and the United States denying their "excess" land water. The trial court specifically found that the lands which the Albonicos sought to be excluded "would not be benefited by the operations of the Madera Irrigation District", (unless water was delivered thereto), and that "no evidence was introduced" tending to show any such benefit at the hearing be-

4. For example, Courtney McCracken, a landowner within the Ivanhoe district, had paid his assessments to the district from the day of its organization. (R. 156.) As to assessments paid by Phillip and Jane Albonico, see *infra*, p. 77.

fore the district directors. (R. 412.) The trial court thereupon entered judgment in the alternative requiring either that the district supply water to all of the Albonico's lands, without discrimination, or that the lands be excluded from the district. (R. 418-420.) This judgment the Supreme Court of California modified by striking out the second alternative and, as so modified, the judgment was affirmed. (AJS 183.)

The participation of various state agencies and of the United States in these proceedings is of interest. Counsel for the Bureau of Reclamation appeared as *amici curiae* in the trial court in the *Ivanhoe* and *Madera* cases, but no appearance or presentation was made by the United States or any of its officers at the trial of the other two cases. No appearance or presentation was made in *any* of the four cases before the Supreme Court of California until subsequent to its decisions, several years after the entry of the trial courts' judgments. Only after the court below had decided the cases, in January, 1957, did the Government reappear, this time in the name of the United States as *amicus curiae* in support of various petitions for rehearing. Its offer to the court below at that stage to "explain and clarify" the issues, including one which it then discovered to be of "great constitutional importance", was duly declined.[5]

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5. As we pointed out in our Reply to Memorandum for the United States as Amicus Curiae in Support of Jurisdiction, the Government's record in these cases is suggestive of the "strange transaction" respecting California waters in which this Court found it had engaged in *United States v. Gerlach Live Stock Co.*, 339 U.S. 725, 741-742. Certainly the Government's long period of silence while these cases were before the California courts does not add persuasiveness to its present plea for review by this Court. The inference arises, we submit, that during this extended period the Government failed to participate because it deliberately—and correctly—recognized that the issues involved are essentially matters of state law.

The record of the state agencies is hardly less confusing. The California Attorney General originally entered the *Ivanhoe* case to challenge the validity of the contracts as in derogation of state law. The answer originally filed by the state in the *Ivanhoe* case prayed that the contract be held invalid. (R. 50.) The present Attorney General reversed the state's position, filing an amended answer in the *Ivanhoe* case which, so far as the state was concerned, prayed that the contracts be held valid. (R. 77, 84-85.) The Attorney General in this Court has now assumed representation of the Ivanhoe Irrigation District, as well as of the state, as appellants.

The State Water Project Authority and the State Engineer were at the time of the trial of the *Ivanhoe* and *Madera* cases vested with important responsibilities with respect to state water law. (R. 140, 335-336.) Their functions, so far as now pertinent, have since been transferred to the newly-created Department of Water Resources and the State Water Rights Board. Water Code, Sections 120 *et seq.*, 175 *et seq.* The participation of the Authority and State Engineer was deemed so important by the trial courts, in these cases that, *sua sponte*, the courts invited their appearance. (AJS 4, 10, 140-141.) In the trial courts the Attorney General appeared for the Water Project Authority, as well as for the state, and the State Engineer was represented by separate counsel. The answers filed by the present Attorney General in the *Ivanhoe* and *Madera* cases was in behalf of both the state and the Authority. These answers requested validation of the contracts in behalf of the state but contained no such prayers for validity in behalf of the Authority. (R. 84-85, 241.) The answers of the State Engineer likewise took no position as to the validity of the con-

tracts in either the *Ivanhoe* or *Madera* cases. (R. 102, 110-111, 288, 296-297.)

Thereafter, the Attorney General in the *Ivanhoe* case first filed an appeal in behalf both of the state and the Authority, and then later dismissed the appeal as to the Authority. No appeal was filed for the Authority in the *Madera* case. The State Engineer did not appeal the judgments of invalidity and before the state supreme court urged the integrity of state water law.

The California Water Project Authority, the State Engineer, their successors, the Department of Water Resources and the Water Rights Board—none has manifested dissatisfaction with the decisions below by joining in the appeals to this Court.

The following background is also helpful to an understanding of these cases:

Immediately upon the admission of California as a State, the Legislature provided for studies of its water resources and problems. (AJS 13, *et seq.*) Various phases of these studies were in progress when, in 1913, the California Water Commission Act was passed (Stat. 1913, Ch. 586, p. 1012). The pertinent features of this Act, as continued and incorporated in the California Water Code, are these: Previous valid appropriations of water were recognized. A system of filing applications with designated State authorities was set up to gain such appropriative rights after 1913.

This system of appropriation was, during all of the times involved in these cases, recognized as the proper and the only method of acquiring a right to unappropriated water (we are not here dealing with riparian rights or prescrip-

tive rights). Water Code, Sections 1225, *et seq.*, 1052. During all of the times involved herein, the State Engineer, as the Chief of the Division of Water Resources, was charged with the duty of administering the State water laws. Water Code, Sections 201, 202.[6]

In keeping with the fundamental water law of the West, including in particular California, priority of right of an appropriator is fixed as of the date of the filing of the application (before 1913, on the date of the taking or posting of notice):

> "Any application properly made gives to the applicant a priority of right as of the date of the application until such application is approved or rejected. Such priority continues so long as the provisions of law and the rules and regulations of the department are followed by the applicant." Water Code, Section 1450.

After hearing and determination of the application, a permit may be issued by the State Engineer. Water Code, Section 1375. This is followed by a license on completion of a project. Water Code, Section 1600, *et seq.*

Important is the fact that the State Engineer, in passing upon applications to appropriate, is given a measure of discretion, and is authorized to impose conditions in issuing permits and licenses:

> "The department shall allow the appropriation for beneficial purposes of unappropriated water under such terms and conditions as in its judgment will best develop, conserve, and utilize in the public interest the water sought to be appropriated." Water Code, Section 1253.

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6. These references are to the Water Code as it existed prior to the reorganization of state water agencies effected by California Stat. 1st Ex Sess. 1956, Ch. 52. See *supra*, p. 13.

During 70 years of state studies on water matters, a state-wide conservation plan had been developing. In 1921 a plan of this scope was authorized. In 1927, in contemplation of its utilization of the water resources of the state in the state plan, and, in particular, the waters of the San Joaquin River in the proposed Central Valley plans, the Legislature required the State Director of the Department of Finance to file applications to appropriate the unappropriated water of the state for the state and the areas to be benefited. Some 37 such applications were filed by the Director on behalf of the state on state streams in the Central Valley area, some of which were for the storage of water at Friant Reservoir on the San Joaquin River. (AJS 13-14.)

In 1933, the Legislature, in order to put to use the waters appropriated by the state in furtherance of the state's plan in the Central Valley of California, created the Water Project Authority of the State of California (Stat. 1933, Ch. 1042). The provisions concerning the Authority were, in 1943, codified into the Water Code as Section 11400, *et seq.* The Central Valley Project, as a state project, was in the same 1933 legislation defined by the Legislature, and, as so defined and enlarged, is found in the California Water Code, Section 11100, *et seq.*

Important in the 1933 statute defining the Central Valley Project, and creating the Water Project Authority as a "body politic and corporate with power of perpetual succession and with power to sue and be sued", are the provisions that:

> "* * * the authority shall have full charge and control of the construction, operation and maintenance of said Central Valley Project and the collection of all rates, charges, and revenues of whatsoever character

> therefrom. The authority shall proceed with the construction of said Central Valley Project immediately upon there being made available funds for such work * * *". Stat. 1933, Ch. 1042, Section 15, page 2654; Water Code, Sections 11451, 11452.

The Authority was given power to contract for the carrying out of some of its functions, and power to contract with the United States (Stat. 1933, Ch. 1042, Section 15, first paragraph, page 2654; Water Code, Section 11500). The Act of 1933 specifically provided for the construction of Friant Dam, the Madera Canal (to serve the Madera District, *et al.*), and the Friant-Kern Canal (to serve the Ivanhoe District, *et al.*) (Stat. 1933, Ch. 1042, Section 4(4) (5) (6), page 2645; Water Code, Sections 11225-11226, 11230-11231, 11235-11236).

Although the Authority was authorized to issue $170,000,000 in bonds to finance the Central Valley Project, the depression market for bonds was not favorable. The Authority then applied to the Federal Emergency Administration of Public Works of the United States for a loan and grant to the Authority as a state agency (see McCracken Exhibit 18, *Ivanhoe*, Rep. Tr. 87, April 3, 1951). The loan was to be used by the Authority for its construction of the Project, and to be repaid by it to the United States (R. 123-124).

Instead of a loan and grant, funds were made available to the Secretary of the Interior, under the Emergency Relief Appropriation Act of 1935. The Bureau of Reclamation established an office in Sacramento, and started work on the Project. Thereafter, the Project was reauthorized by Congress as a reclamation project under the reclamation law. (AJS 17-18.)

The Authority, however, having a duty under the Central Valley Project Act to construct the project, collect the revenues, and repay the Federal Government, in 1936 entered into a "Memorandum of Understanding" with the United States, which provided, among other things:

> "13. It is further contemplated that a contract will be entered into between the United States and the Water Project Authority providing for (among other matters):
>
> (a) The operation and maintenance by the Authority of useful units of the Project, upon presenting assurance of payment satisfactory to the United States of the cost thereof;
>
> (b) Appropriate payment by the Authority to the United States for expenditures in construction of the Project;
>
> (c) The securing by the Authority of the appropriate contracts for disposal of facilities to be made available by the Project."

(See McCracken Exhibit 20; *Ivanhoe*, Rep. Tr. 91, April 3, 1951; R. 123-124.)

This contract was never revoked or cancelled, and stands as the basis of the relations between the United States, the Authority and the State of California (R. 124). In 1940, after repeated demands by the then Governor of California for a contract, a meeting between the Authority and representatives of the United States was finally obtained. The United States flatly refused a contract, or to permit the Authority to exercise its functions under the Central Valley Project Act and the Water Project Authority Act. (R. 124-125.) The United States' position was typified by the following statement of the federal representative:

> "Mr. Wright: I should say, sir, that inasmuch as it is the intention of the Department of Interior and the

Bureau of Reclamation to operate this Project, to operate the main features of it, that any contracts that are entered into would have to be between the United States and the water users. Naturally, it would be appropriate that those contracts be a matter of negotiation between the United States and the water users. Such assistance as the State might be in the organization or furthering of water users association or similar associations, I would think would be eminently proper and useful, but for the State to attempt to act as a third party, as a go-between, between the water users and the United States, it seems to me would be a waste of effort." (McCracken Exh. 83, p. 61, *Ivanhoe*, Rep. Tr. 8, April 16, 1951.)

Of the 37 water applications filed by the State Director of Finance (AJS 13-14), there is particular interest in numbers 5637, 5638, and 9369, relating directly to Friant Dam and Reservoir, and the Madera and Friant-Kern Canals. By 1939, the United States had sought *unconditional* assignments of these and other applications filed by the Director of Finance. (McCracken Exh. 32, p. 28, *Ivanhoe*, Rep. Tr. 106, April 3, 1951, offered by state.) Such unconditional assignments were refused. The assignments of these three applications, as well as other assignments accepted by the United States, were made by the State on the express condition that they ran to the United States, acting by its Bureau of Reclamation,

"for the use and benefit of said Central Valley Project, California." (Exh. C to amended answer of State of California and Water Project Authority, *Ivanhoe*, R. 92, 94-95; R. 127, 316.)

There are numerous assignments to the United States by the California Director of Finance on the same or similar terms. In addition to these, there are numerous applications

filed directly by the United States with the California Division of Water Resources (now the State Water Rights Board). In processing these applications, the United States, acting through the Bureau of Reclamation, has consistently followed state law. Prior to the issuance of licenses, under the state statutes reviewed *supra*, p. 15, the State Engineer, and now the State Water Rights Board, issues permits for the construction of dams and the diversion of water. At the time of the writing of this brief, but subsequent to the opinions filed below, permits have been issued to the United States on various units of the Central Valley Project. Among these are the Sly Park Project and the American River Project, at Folsom. The State Engineer in his order on the Sly Park Project conditioned the permits issued to the United States as follows:

> "2. The right to divert and store water, and apply said water to beneficial use as provided in this permit is granted to the United States as trustee for the benefit of the public agencies of the State, together with the owners of land and water users within such agencies, to be supplied with the water which is the subject of this permit.
>
> "3. Any and all rights acquired or to be acquired pursuant to this permit are and shall be permanent and, except where water is distributed to the general public by an agency in charge of a public use, shall be appurtenant to the land to which said water shall be applied, subject to continued beneficial use and the right to change the point of diversion, place of use and purpose of use as provided in Chapter 10 of Part 2 of Division 2 of the Water Code of the State of California; and further subject to the right to dispose of a temporary surplus.
>
> "4. Upon completion of the project contemplated under this permit and the application of the water to

beneficial use, any license or licenses which may be issued pursuant to Chapter 9 of Part 2 of Division 2 of the California Water Code shall be issued to the public agencies of the State within which the water has been found by inspection by the State Engineer to have been applied to beneficial use." (Decision A 13707, 13708 D 855, decided June 22, 1956, State of California, Department of Public Works, State Engineer, In the Matter of Applications 13707 and 13708 by the United States of America * * * Sly Park.)

Conditions similar to the foregoing quoted provisions of the Sly Park permit were also attached to the permits issued to the United States on its applications Nos. 13370, 13371, 13372 and 14662, American River, by the order of the State Water Rights Board, dated March 19, 1958.[7]

A few additional facts are stated at pertinent points in the Argument.

SUMMARY OF ARGUMENT

Decision in the four cases turns on the validity of certain purported contracts entered into between the United States, acting by the Bureau of Reclamation, and various California irrigation districts, organized and existing under state law. The contracts on their face required validation in judicial proceedings; the Supreme Court of California held them invalid. The Federal Government is not here exerting any regulatory or coercive power, such as the power to regulate interstate commerce. Neither navigation nor public lands are involved. The relevant enactments make it crystal clear that Congress has deliberately elected to proceed solely by

7. These official actions of the State Engineer and the State Water Rights Board on applications filed and prosecuted by the Bureau of Reclamation are obviously available to all of the parties, and the Court may take judicial notice of them.

way of contract, with such state created agencies as have the capacity under state law to enter into such contracts. A contract of this character is necessarily invalid if the state agency lacks capacity to enter into it. This is first and last a matter of state law.

I.

The appeals should be dismissed and certiorari denied because the decisions below rest on an adequate state ground and no substantial federal question is presented. In response to appellees' motion to dismiss, the Court on October 14, 1957 entered an order deferring further consideration of the question of jurisdiction to the hearing on the merits. The fuller consideration now made possible requires dismissal and denial of certiorari.

Analysis of the opinion of the Supreme Court of California in the *Ivanhoe* case, which was expressly relied upon for the result reached in the remaining three cases, demonstrates that decision turned on the court's holding that the irrigation district lacked the capacity under state law to enter into the particular contract here involved. The court held the Ivanhoe, and the contracts involved in the other cases, invalid because the district was required to discriminate against its own members in supplying irrigation water and because the contract failed to recognize a permanent water right. Both of these grounds were based on the proposition that under California statutory and constitutional law an irrigation district lacks power to enter into a contract of this kind. Federal law, notably Section 8 of the Reclamation Act of 1902, was appropriately (although not necessarily) referred to by way of confirming the force and effect of state law.

Although the State Water Code, Section 23200, permits irrigation districts to include in contracts with the United

States provisions conforming with the "applicable" federal enactments, the court held that this could not save the instant contracts. If their terms were required by federal law, such law could not be considered "applicable" within the meaning of the state statute.

The court's reliance on state law is further shown by its reference to the constitutional protection afforded water users. It is undisputed that here the court was referring not to the Federal but to the California Constitution, Article I, Sections 11 (uniformity of treatment) and 13 (due processes). The court squarely held that, had the California Legislature attempted to validate these contracts, it could not have succeeded because this would have been an avoidance of "all of the laws of the state, both constitutional and statutory" respecting the regulation and control of such matters (AJS 58-59).

Accordingly, under the well-settled principles applied in numerous decisions of this Court, there is no basis for review. This Court cannot undertake to invest state irrigation districts with a contractual capacity which they lack under state law. An opinion of this court, in the words of *Flournoy v. Wiener*, 321 U.S. 253, 261, would hence "be advisory only".

II.

In the remaining portions of the Argument, it is assumed that a substantial federal question is presented. On this assumption, it will be seen that the Supreme Court of California correctly answered it. The evidence is overwhelming that Congress has left within state jurisdiction the capacity of state irrigation districts to contract and the control, appropriation, use and distribution of water for irrigation purposes. Section 8 of the Reclamation Act, which has been reaffirmed by the Congress as late as 1956, explicitly pro-

vides that nothing therein shall interfere with such state jurisdiction with respect to irrigation waters.

Likewise, the decisions of this Court consistently and vigorously affirm that Congress has left these matters to state jurisdiction. The decisions of the Court from, for example, *California-Oregon Power Co. v. Beaver Cement Co.*, 295 U.S. 142, through *Mason Co. v. Tax Comm'n.*, 302 U.S. 186, and *Ickes v. Fox*, 300 U.S. 82, to *United States v. Gerlach Live Stock Co.*, 339 U.S. 725, would have to be overruled if appellants' contention as to the supremacy of federal law were accepted.

III.

Had Congress attempted to override state law, which it did not do, its action would have conflicted with the Federal Constitution. Congress here, as we have seen, is not exerting any regulatory or coercive power, but is relying upon its authority to tax and spend for the general welfare (and possibly its property acquiring and disposing power). In exercising the taxing-spending-general welfare and property powers, the Government may not regulate and coerce to the point of overriding state law. The decisions of this court from *Kansas v. Colorado*, 206 U.S. 46 through *United States v. Butler*, 297 U.S. 1, and *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288 to the present time establish this limitation where the powers of the Federal Government are restricted to these constitutional sources of authority.

If the Court were now to hold that, in defiance of state law, the Federal Government may invest an irrigation district with a contractual capacity which it lacks under the law of its creation, or may override state irrigation law, it would be necessary to overrule decades of precedents. If the time should come when under the general welfare and

property acquiring and disposing powers the Federal Government could override state law, it would then be idle to speak of a Central Government of limited powers. At this point that distinctive American contribution—federalism—would be at an end.

IV.

Finally, we point out that if an irrigation district could be compelled to accept the terms of the present contracts, there would result a denial of due process and equal protection to its member-landowners, contrary to the Fourteenth and (to the extent applicable) the Fifth Amendments. By the terms of the contract, the irrigation district would be compelled to breach its fiduciary responsibility to its members and to deny them inchoate and vested rights under California constitutional and statutory law. Such a deprivation and denial cannot be justified on any illusory claim that a federal subsidy is being offered, or on any other ground.

As in the case of the discussion under III, above, we do not anticipate that the Court will find it necessary to reach questions under the Fourteenth and Fifth Amendments. The grave constitutional issues which would be presented, should the Court reach them, invite affirmance of the judgments below on other grounds.

For these reasons, the appeals should be dismissed and writs of certiorari denied, or, should the Court believe that a substantial federal question is presented, the judgments should be affirmed. Other alternatives would be presented only in the event that, contrary to our contentions, the Court does not dismiss, deny or affirm. Even in that event the Court would not be warranted in ending the litigation by reversing the judgments below. Questions of state law would still

remain for determination by the Supreme Court of California, including if necessary issues heretofore left undecided.

Dismissal, denial or affirmance will not mean, we submit, that federal reclamation will come to an end and that the projects existing in California will fall into disuse. On the contrary, the way will then be open for new arrangements or contracts fair both to the people of the nation as a whole and the people of California.

ARGUMENT

These cases consist of three contract validation proceedings (Nos. 122, 123 and 125) under the California Water Code, in which the Supreme Court of California held the contracts invalid; and a fourth case (No. 124), which turned upon these holdings (specifically, the holding of invalidity in No. 123). The single ultimate question in each case, therefore, is the validity of the pertinent contract; other issues are involved only to the extent that they bear upon the ultimate question of validity.

For the reasons stated in the motion to dismiss the appeals and supporting brief, no substantial federal question is presented and the appeals should be dismissed. By its order of October 14, 1957 the Court deferred further consideration of the question of jurisdiction to the hearing on the merits. (R. 656.) The fuller consideration now made possible will, we believe, confirm the result of dismissal.

Should the Court believe, however, that a substantial federal question is presented, we submit that consideration on the merits will require decision that the federal law itself refers the matter to the jurisdiction of the state, upon which the Supreme Court of California has the final word. The argument so far is developed under Points I, II and III below.

As further grounds in support of the judgments below, we maintain that the federal statutes relied upon do not warrant various provisions of the contract in issue and, if so applied, would violate the rights of members of the contracting state districts contrary to the Fifth and Fourteenth Amendments. These grounds are presented under Point IV below.

Before proceeding with Point I, we outline the decided shift in position and emphasis which appellants have somehow managed to execute between the time of their appearance in the state courts and this Court. This analysis may be helpful both in understanding references to the position of the parties in the opinions of the Supreme Court of California (*e.g.*, see *infra*, p. 34) and the character of appellants' argument before this Court. Appellants' flexibility is shown in tabular form as follows:

APPELLANTS' POSITION IN

The California Courts	The Supreme Court of the United States
As to the trust character of the waters:	
The integrity of the State constitution and statutory laws respecting water must be protected.	
The state is trustor of an express trust relating to the use of water in the Central Valley Project.	The trust theory accepted by the Supreme Court of California is wholly erroneous; its sole justification is to prevent validation of the contracts (App. Br., pp. 11, 33, 56-57, 60.)
The United States is trustee for the use and benefit of the beneficiaries of the Central Valley Project waters.	
The applications of the State Director of Finance to appropriate the waters for the project were made for the use and benefit of the owners of the lands to be benefited.	No "rights", either of landowners or of the state, "are involved", since "the United States can acquire whatever rights it needs, and since the acquisition is not contingent on payment in advance." (App. Br., pp. 22-25.)
In the assignments of the above applications the state is trustor,	

the United States is trustee and the landowners are the beneficiaries. (See Paragraphs I, VI and VIII of the amended answer of the state, R. 77, 81, 82.)

As to the force of Section 8 of the Reclamation Act:

The Secretary of the Interior under Section 8 of the Reclamation Act is required to conform to state law as to the appropriation, control and distribution of waters. (Reply Brief, *Ivanhoe*, State Supreme Court, p. 29.)	The California Supreme Court indulged in a "tortured interpretation of section 8 of the Reclamation Act of 1902." The court's insistence upon the integrity of California water law is based upon an "erroneous interpretation" of Section 8. (App. Br., pp. 24, 58, 80.)

As to the necessity of the United States' proceeding to secure water rights under California law, and as to the proposition that the United States' rights in water for irrigation purposes, however obtained, cannot be greater than permitted under California law:

The United States must secure permits under state law to appropriate and use water. (Reply Brief, *Ivanhoe*, State Supreme Court, p. 30.)	The United States under federal law may obtain an "unlimited title" in the water. Appropriations under state law give no right which can be protected against an exertion of federal power. If the contracts in issue are consistent with federal law, it is immaterial that they are contrary to state law. (App. Br., pp. 61, 80-82.)

As to the permanency of the water right to be obtained by landowners within the districts:

The controlling state law assures a perpetual water supply. (Reply Brief, *Ivanhoe*, State Supreme Court, p. 28.)	California landowners have no water rights which the United States must respect. No duty exists as to permanent water delivery. (App. Br., pp. 23, 33.)

Certain of these shifts in position and emphasis will be further referred to in the course of our argument.

I. This Court Should Refuse Jurisdiction Because the Judgment, in Each Case, Rests on an Adequate Non-Federal Basis and No Substantial Federal Question is Presented.

A. WHERE THE JUDGMENT RESTS ON AN ADEQUATE NON-FEDERAL BASIS THIS COURT WILL NOT TAKE JURISDICTION.

Chief Justice Stone has stated the principle which, we submit, controls the instant cases, as follows:

> "* * * we have repeatedly held that where the judgment of a state court rests in part on a non-federal ground adequate to support it, this Court will not consider the correctness of the decision which the state court also made of a federal question otherwise reviewable here." *Flournoy v. Wiener*, 321 U.S. 253, 262.

The reason for this rule

> "is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion." Mr. Justice Jackson, speaking for the Court in *Herb v. Pitcairn*, 324 U.S. 117, 125-126.[7a]

The foregoing quotations summarize the holdings in these two cases, which are in accord with numerous other cases

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7a. Of the present members of the Court, Mr. Justice Frankfurter dissented in *Flournoy v. Wiener* and Mr. Justice Black and Mr. Justice Douglas dissented in *Herb v. Pitcairn*. Their dissents clearly did not go to the rule as stated in the passages above quoted, but rather to its application to the particular facts of these cases, both of which presented difficulties absent, we believe, from the instant cases.

applying the same rule. *Murdock v. City of Memphis*, 20 Wall. 590, 636, 638; *Berea College v. Kentucky*, 211 U.S. 45, 53; *Enterprise Irrigation Dist. v. Canal Co.*, 243 U.S. 157, 163-164; *Lynch v. New York*, 293 U.S. 52, 54-55; *Fox Film Corp. v. Muller*, 296 U.S. 207; *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120; *Black v. Cutter Laboratories*, 351 U.S. 292.

B. THE JUDGMENTS OF THE SUPREME COURT OF CALIFORNIA ARE BASED ON STATE, NOT FEDERAL, LAW.

The principle consistently followed in the foregoing cases applies with compelling force to these appeals. Here, as we shall see, the judgments in strict accuracy rest not "in part on a non-federal ground" but wholly on state grounds. Federal law was appropriately (although not necessarily) referred to by the Supreme Court of California, but only to confirm the application of state law. Appellants' assurance that "The grounds of invalidity of the contracts are all federal" (Br., p. 17) is as astonishing as it is erroneous.

The four cases involved in these appeals are closely related, the court below writing its principal opinion in the *Ivanhoe* case. We shall first review the court's conclusion and reasoning in that case, and then consider any differences or additional issues presented in the other three cases, noting in the course of our review the application of the above-cited and other decisions of this Court.

1. The Ivanhoe Decision.

The critical issue in the case. It will be seen that the Supreme Court of California noted at the outset of its opinion in the *Ivanhoe* case that what is here involved is a *contract*, subject to *confirmation* in the instant proceeding. Although various matters are to be considered as "neces-

sarily incident thereto"; the "judgment is limited to a determination of the validity of the contract" (AJS 2-3). The opinion repeatedly and correctly sounds the theme that the essential issue, to which all else is subordinate, is whether a purported contract to which one of the parties is a public agency of the state should be confirmed in a statutory proceeding established by state law. The Court points out, citing the California Water Code, Section 22680, that "if the contract fails of confirmation on one material ground it must fail of confirmation as a whole" (AJS 11).

Grounds of invalidity of the contract. The Court held the Ivanhoe contract invalid on the following grounds:

1. Articles 34, 35, 36 and 37 cannot be legally justified under California law (AJS 51); in fact, if the California legislature should seek to validate such provisions, its action would be in conflict with the State Constitution (AJS 59). The articles of the contract referred to (R. 36-40) purport to require the Ivanhoe Irrigation District to deny water to land in excess of 160 acres held in single ownership by one of its members unless such member shall sign a so-called recordable contract with the United States agreeing to sell his land in excess of 160 acres at a price determined by appraisers in whose appointment the landowner has no voice, etc.

2. The contract fails to acknowledge the existence of a permanent water right in the district and its members, contrary to state law; and it necessarily implies that the United States, upon the contract's expiration at the end of 40 years, reserves the right to renew or not to renew, on such terms as it may then propose and, if the contract is not renewed, to take the water elsewhere. This is contrary to both state statutes and constitution. (AJS 55-56, 58-59.)

Various other provisions of the contract which were challenged below, the Supreme Court of California upheld as valid. However, on one sharply contested issue, the court deferred judgment. It was contended by appellees that the district's notice of special election (District's Exh. F, *Ivanhoe*, Rep. Tr. 46, April 3, 1951) contained no information relative to what the portion of the construction costs of the Central Valley Project chargeable to the district was or would be, in defiance of the California Water Code, Section 23223, which requires such information to be in the notice of election. The court found it unnecessary to pass upon this challenge, despite the fact that the trial court had concluded that the contract was also invalid on this ground (R. 118-119, 168). The court observed that this question need not be determined since the contract was being held invalid on other grounds and "for the reason that upon any submission of any further proposed contract" the claimed error need not recur (AJS 62).

Application of California law concerning the use of state waters and the powers of irrigation districts. In support of the determinations of invalidity summarized in the numbered paragraphs 1 and 2 above, the court's opinion turns to a discussion of the nature of the title which may be secured in the unappropriated waters of the state or by the state itself as the result of its appropriations or other acquisitions of water rights. Many pages of the opinion are devoted to the historical development of California law as to the use of water for irrigation purposes (AJS 12-21, 23-33). Emphasis is placed upon Section 3, Article XIV, of the California Constitution, as amended in 1928, which declares the policy of the state to be that its water resources shall be put to beneficial use as to the fullest extent to which they are capable (AJS 25-27). Stress is also laid

upon Section 22250 of the State Water Code, which requires that water distributed by irrigation districts shall be apportioned ratably to each landowner upon the basis of the assessment made against him, without discrimination (AJS 46-47). Similarly, Section 22252 of the State Water Code forbids discrimination when water is delivered by a district on the basis of toll charges. Several other sections of the State Water Code—i.e., Sections 102, 104, 105 and 1052—are cited and quoted for the proposition that, under state law, domestic waters for irrigation shall be put to their highest beneficial use and that water users, present and potential, have both vested and inchoate rights to secure the use of state waters on an equal and non-discriminatory basis (AJS 27-29).

In referring to the "inchoate rights of present and potential water users of the state" (*e.g.* AJS 32), deriving from the applications filed by the State Director of Finance and the trust character of the waters, the Supreme Court of California was laying hold of no new or novel principle. In cases where a formal appropriation (posting, filing, or filing application) has been made, but the works are not yet completed and no water has been put to use, the California courts have long held that the resulting right, with related priority back, is a species of real property, and is subject to protection in the courts. In *Inyo Cons. Water Co. v. Jess*, 161 Cal. 516, 521, it was held:

> "This incomplete right, although not as yet a title, is an interest in the realty".

Merritt v. City of Los Angeles, 162 Cal. 47, which is to the same effect, referred to the *Jess* case as follows (pp. 50-51):

> "It was there decided that such a claimant to the use of water has an incomplete, incipient, conditional right

> in the water, which is a vested interest in the real property and which may be adjudged to be such * * *"

In *Byington v. Sacramento Valley Etc. Co.*, 170 Cal. 124, an appropriation had been made by filing at a point many miles from the irrigation district area. The landowners in the *de facto* district sued to prevent the water from being taken to another area. The works were not complete, and no water had yet been put to use. The court held (pp. 131-132):

> "The right to the use of water appropriated to the public may be enforced by one of the community or class entitled to its enjoyment, regardless of title * * * Plaintiffs assert that they are entitled to protect themselves by resort to a court of equity from the dissipation of their rights before the water shall be conducted to a place near their property; from the sale of water outside the district for which it was appropriated; and from the creation of preferential classes who will dispute with them their title to the water which they have as residents of the district * * * a court of equity may entertain an action to quiet title to water not immediately available and may grant appropriate relief."

The Supreme Court of California concluded that under state law "the title to the unappropriated domestic waters of the state is in the State of California in trust for the use and benefit of the beneficiaries of that trust" and that "the trust character of that title is anchored in the state by constitutional provisions, by statutes enacted in furtherance thereof, and by the decisional law of the state" (AJS 32). In this connection, the court observed there was no dispute between any of the parties appearing in the litigation as to the nature of that title (AJS 12, 21-22).[8]

8. Supporting the court's statement that there was no dispute among the parties as to the nature of the limited title which might be secured in the unappropriated waters of the state, the court early

Similarly, the opinion discusses the nature of an irrigation district under California law. Citing prior state decisions, the opinion points out that an irrigation district is a "trustee for the landowners within the district and limited

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in its opinion summarized as follows a pertinent portion of the pleadings:

> "Paragraph VIII of the state's amended answer alleges that by virtue of the terms of the applications [to appropriate water] the state has become and is the trustor of an express trust; that by the assignments the United States has become and is the trustee of that trust; that the landowners to be served from the works of the Central Valley Project, including the landowners of plaintiff district, have become and are the beneficiaries of that trust; that any and all claims or interests of the United States obtained by the proposed contract are held by the United States as such trustee as a part of a trust corpus or res for the use and benefit of the Central Valley Project and the landowners to be served water from the works of that project, and in particular the landowners of Plaintiff District, that the State of California is entitled to be heard, among other things, as to all matters relating to the administration and execution of the trust by the United States and is entitled to require that the trustee administer the trust according to its true intent and meaning." (AJS 8.)

The full text of Paragraph VIII of the state's amended answer is to be found at R. 82. See *supra*, p. 27.

In view of appellants' newly discovered antipathy to the "trust" theory (Br., pp. 56-57), the following passage from Attorney General Brown's opinion of January 5, 1955, 25 Ops. Cal. Atty. Gen. 8, 11, is also of interest:

> "The effect of the 1927 legislation was to withdraw the then unappropriated waters of the State filed on by the Department of Finance from any further appropriation by private parties. And, if any further implementation of prior law was needed, the 1927 act established a procedure whereby, within the concepts applicable to privately owned water rights, the State in its *role as trustee for the people* could fairly be said to perfect its own 'right' to water needed for the general or co-ordinated plan to the exclusion of all other persons or parties." (Emphasis ours.)

We also invite the Court's attention to Trelease, "Government Ownership and Trusteeship of Water", 45 Cal. L. Rev. 638. Referring to the "trust theory" of the Supreme Court of California in the *Ivanhoe* case, the author observes (p. 645): "Actually, the concept is quite old."

in its trust to receive and distribute water to them." Moreover, the court pointed out, quoting from one of its earlier opinions, an irrigation district, unlike a municipal corporation, has only the legal title, as trustee, of the property which it holds, and "the beneficiaries of the trust—who, upon familiar equitable principles, are to be regarded as the owners of the property—are the landowners in the district with whose funds the property has been acquired * * * and in whom, indeed, is vested by the express provisions of the statute, in each, the right to the several use of a definite proportion of the water of the district, and in all, in common, the equitable ownership of its water rights, reservoirs, ditches, and property generally, as the means of supplying water." (AJS 29.)

The opinion makes no pertinent reference to federal law until it has concluded its discussion of the limited title, in trust, which may be secured in the unappropriated waters of the state, and the trust relationship between an irrigation district and its members. It then (AJS 33-35) discusses Section 8 of the Federal Reclamation Act of 1902, in confirmation of the validity of the state constitutional, statutory and decisional law with respect to the rights which may be secured in water for irrigation purposes. This important provision we consider under Point II, *infra*, pp. 48-49. The court concluded its reference at this point to federal law, which covers only two pages of its opinion, as follows (AJS 35):

> "We therefore feel free to declare that in all transactions between the United States and the State of California or its agencies such as the plaintiff district, the parties are dealing with trust property held by the state or by those who have acquired rights to it from the state or otherwise for the benefit of the real owners thereof. They are the present and prospective water

users of the state who may become entitled thereto under the laws of the state. Whatever interest or title the United States has acquired to water by appropriation, assignment or by other means of acquisition in furtherance of the execution of its trust relationship with the water users of the state is necessarily subject to the limitations of title herein determined."

The case at this point is suggestive of the holding of this Court in the *Fox Film* case, above cited:

"The case, in effect, was disposed of before the federal question said to be involved was reached. *Chouteau v. Gibson*, 111 U.S. 200; *Chapman v. Goodnow*, 123 U.S. 540, 548. A decision of that question then became unnecessary; and whether it was decided or not, our want of jurisdiction is clear." 296 U.S. at p. 211.

The court fully considered Section 23200 of the California Water Code, which permits irrigation districts to contract with the United States for a water supply and to distribute and apportion the water in accordance with the "applicable" acts of Congress. The opinion expresses doubts that certain provisions of the Reclamation Act were intended to extend to privately-owned lands (AJS 49-50). The court very clearly, however, did not base decision upon such an interpretation of the federal act, but simply held that if the federal act should be construed to apply to privately-owned lands,

"such construction would obviously remove it from consideration as an 'applicable' law governing the execution of the contract in question. *Since its attempted application to the contract is unauthorized under the laws of this state it is necessarily not an 'applicable' law.*" (AJS 50.) (Emphasis ours.)

A few lines later, the court holds, referring to the section of the Water Code in question:

> "Section 23200 contemplates that *applicable* federal law shall apply." (AJS 51.) (Emphasis the court's.)

Later, in considering other provisions of the contract the court refers to the controlling force of "the applicable water law of this state." (AJS 56.)

Appellants argue that where a state statute incorporates, or even refers to, federal law, its interpretation itself becomes a federal question. (App. Br., pp. 38-39.) If the case now turned upon this issue, a starting point for discussion would be *Miller's Executors v. Swann*, 150 U.S. 132, 136-137, where the Court held:

> "The fact that the state statute and the mortgage refer to certain acts of Congress as prescribing the rule and measure of the rights granted by the State, does not make the determination of such rights a Federal question."

To the same effect is *Louis & Nash R. R. v. West. Un. Tel. Co.*, 237 U.S. 300, 303; *Cf. Flournoy v. Wiener*, 321 U.S. 253, 260.

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9. Before this Court it would seem unnecessary to argue at length the grounds presented to the Supreme Court of California in support of the conclusion which it reached that various provisions of the federal law are not "applicable" law within the meaning of Section 23200 of the State Water Code. Reference may be made, however, to the action of the California Legislature, called to the attention of the court below, memorializing the then Director of Public Works and the State Engineer to assure that:

> "licenses issued to the United States for irrigation purposes in connection with federal reclamation projects be limited to water subject to contracts between public agencies of the State and the United States which the State Engineer finds to be in the public interest *and to conform to state law* * * * " (Emphasis ours.)

See Stat. 1953, pp. 272, 273, 274 and 405, 406, 407, Ch. 24 of the 1952 Regular Session and Ch. 4 of the 1952 First Extraordinary Session.

It is difficult to see, however, that any incorporation or reference problem is presented since the question at the outset is whether the state statute has in fact adopted federal law. This would seem, first and last, a state question. The California Legislature was under no obligation to enact Section 23200 in the present or any other form. In deciding to permit irrigation districts to contract with the United States, California was entitled to prescribe, within constitutional limits, the provisions which such contracts might contain so far as the power of its irrigation districts is concerned. Likewise, it was entitled to decide what it meant by "applicable" federal law, and it is up to the highest court of the state finally to declare the legislative policy in this regard as it is to be found in the statute.

The court also discussed the debtor-creditor relationship contemplated by the contract, questions as to the title to the works, the permanency of water rights, and the ascertainment of the total amount for which the irrigation district was liable. (AJS 38-40, 52-56.) Although appellants argue that thereby substantial federal questions were raised, it seems clear that the court below, of necessity, was looking at the matter from the standpoint not of federal right but of irrigation district responsibility, fiscal and otherwise, under California law.

Under that law, the landowner long before the expiration of 40 years would have acquired by use a vested right, appurtenant to the land, in the water supply. It could not be defeated by the refusal of the supplier to renew a contract. On the other hand, where water under California law is distributed for irrigation purposes by a utility company under circumstances which do not give the user a vested right, the supplier is nevertheless bound to make distribution to the public without discrimination or preferences, in

accordance with the state's, and not its own, conception of public policy. *Leavitt v. Lassen Irr. Co.*, 157 Cal. 82; *Butte Co. W.U. Assn. v. Rd. Commission*, 185 Cal. 218, 224. Such water companies are subject to regulation by the State Public Utilities Commission (Pub. U. Code, Div. 1).

As the court below held, "under the controlling state law, the furnishing of water to consumers by a utility must be subject to and be in conformity with certain rules and regulations established by or under the authority of the Constitution and the statutes of the state * * *. If this contract were construed as imposing upon the districts and the landowners therein a burden under which they may suffer the loss of water rights at the discretion of the United States, such a construction would be contrary to well established constitutional principles and protection."[10] (AJS 55-56.)

Application of California Constitutional provisions. The opinion at several points refers to the constitutional protection afforded state water users against denial of due

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10. The Act of July 2, 1956, 70 Stat. 483, 484, referred to *infra*, p. 49, which was enacted long after the instant contracts had been signed, and while the cases were pending below, was obviously designed to correct some of the uncertainties—and inequities—now under discussion. See the Senate Report on the Bill, Senate Report No. 2241, 84th Cong., 2d Sess. The Act requires the Secretary of the Interior, "if the other contracting party so requests," to include repayment and other provisions in the contracts, including mandatory renewal, quite different from those in the contracts before the court below and this Court. Section 2 of the Act gives the Secretary authority "to negotiate amendments to existing contracts * * * to conform said contracts to the provisions of the Act."

The irrigation districts now before the Court have not had an opportunity to avail themselves of the renegotiation procedure. Were the present contracts to be renegotiated under this Act, it is evident that they would be instruments quite different from those now before the Court. The validity of the instant contracts, however, must obviously be judged on their present terms.

It should be remembered that Section 4 of the Act of July 2, 1956 incorporates the familiar Section 8 of the Reclamation Act of 1902, requiring respect for state water law.

process and invasion of their right to equal and non-discriminatory treatment. (AJS 27, 29-30, 32, 47, 48-49, 56, 59.) This protection stems from California water law, including Section 3 of Article XIV of the State Constitution, dealing with the use of state waters, and the relevant provisions of the State Water Code.

The present contract, as the court recognized, attempts to impose upon the Ivanhoe Irrigation District a discriminatory method of water distribution which has no relation whatsoever to the needs of the land or the beneficial use to which the water may be put, but is related solely to the identity of the owner of the land. Even apart from the requirements of the California statute law, it is impossible to say how such a discriminatory scheme could be reconciled with Article XIV, Section 3 of the California Constitution. That provision, as we have seen, requires that the water resources of California "be put to beneficial use to the fullest extent of which they are capable." The State Constitution looks to the land and the use it can make of the waters, and contains no exception based upon the identity of the landowner.

Where the people of California have desired to distribute state property with reference to the holdings of the distributee, they have shown themselves capable of saying so. Thus, Article XVII, Section 3 of the State Constitution provides that lands belonging to the state, which are suitable for cultivation, shall be granted to actual settlers "and in quantities not exceeding three hundred and twenty acres to each settler, under such conditions as shall be prescribed by law." The absence of any such limitation in the case of the constitutional provisions dealing with water is noteworthy and may not be disregarded.

The reliance placed by the court upon due process and equality of treatment was clearly grounded upon the proposition that the state law governing irrigation districts, if improperly construed to authorize the instant contracts, would collide with Article I, Sections 11 (uniformity of treatment) and 13 (due process) of the California Constitution, as the record references above cited demonstrate. (See particularly AJS 29-31, 47.) The court did not cite any federal cases, in this relation, and *City of Pasadena v. Stimson*, 91 Cal. 238, from which the court quoted on the equal protection point (AJS 47), does not cite any federal cases.[11]

Finally, in concluding this phase of the discussion, reference should be had to the disposition made by the court below of the contention that the validity of the contracts under California law was established, in some fashion, by the Second Validating Act of 1949, enacted by the California Legislature. After showing that this Act did not, and was not intended to, validate the instant contracts, the court continued (AJS 58-59):

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11. There are only two references anywhere in the opinion to the Federal Constitution. The first appears during the course of a discussion of riparian rights, not here in issue, simply in the phrase "protected from unlawful encroachment by both state and federal Constitutions." (AJS 27.) And the second, which is likewise preceded by a reference to the State Constitution, appears in a quoted passage from *Merchants Nat. Bank v. Escondido Irr. Dist.*, 144 Cal. 329, referring to "the protection of the provision of section 13 of article I of the State Constitution * * * that 'no person shall be * * * deprived of * * * property without due process of law,' and of the similar provision of Section 1 of the fourteenth Amendment to the constitution of the United States." (AJS 29-30.)

Where the state court of highest resort is ambiguous in its treatment of both federal and non-federal questions, and the state ground is adequate to support the judgment, this Court presumes that the decision below was based upon the non-federal ground. *Lynch v. New York*, 293 U.S. 52, 54-55; *New York v. Central Savings Bank*, 306 U.S. 661. Although available, this rule need not be invoked in the present instance because no such ambiguity exists.

"Furthermore if the contract be deemed to include a utility type contract at the option of the United States; the Second Validating Act of 1949, or any validating act of the character of the one here relied upon by the attorney general, could not render such a contract valid. It is well settled that the Legislature may ratify only what it could have theretofore authorized. It is obvious that the Legislature could not by a general ratifying statute breathe validity into a contract the effect of which would be to avoid *all of the laws of the state, both constitutional and statutory,* respecting the regulation and control of public utilities in this state * * * *In addition any validating act could not have confirmed the 160-acre limitation for the obvious reason that the Legislature could not have theretofore constitutionally authorized it.*" (Emphasis ours.)

The logic of the opinion returns us, then, to our starting point. The critical issue at stake is simply the validity of a contract to which a state-created agency is a party. The contract cannot be valid if one of the parties to it, the state agency, lacks the capacity to enter into it. The Ivanhoe Irrigation District lacks such capacity; the contract is invalid.

2. The Decisions in the Madera, Albonico and Santa Barbara Cases.

The *Madera* and *Santa Barbara* cases, like *Ivanhoe*, were contract validation proceedings. The contracts there involved, in the provisions presently relevant, were substantially the same as the Ivanhoe contract. (AJS 139, R. 185-*Madera;* AJS 211, 221; R. 477, 505, 537-*Santa Barbara.*) The contracts were held invalid on the grounds set forth in *Ivanhoe,* the court making express references to its decision in that case. (AJS 145-*Madera;* AJS 221-*Santa Bar-*

bara.) As in *Ivanhoe*, in both *Madera* and *Santa Barbara* challenges were also made as to the sufficiency of certain proceedings leading to the execution of the contracts and the adequacy of the notices of election for their confirmation. And as in *Ivanhoe* the court in both cases found it unnecessary to decide these questions, on the ground that, the contracts having been found invalid in view of their substantive provisions, upon the submission of any further proposed contracts the alleged defects need not recur. (AJS 153-154-*Madera*; AJS 222-*Santa Barbara*.)

In their struggle to maintain that the cases were decided on federal rather than state grounds, appellants (1) point to the fact that all four cases were decided on a common basis, and then (2) argue that "a common state ground" does not extend to the *Santa Barbara* case. This is so, according to appellants, because Section 22250 of the California Water Code, although applying to all irrigation districts, does not in terms apply to the Santa Barbara County Water Agency, which was organized under a separate statute, or its member units. Section 22250 of the Water Code, *supra*, p. 33, is the provision which requires that water distributed by districts be apportioned ratably to each landowner. (App. Br., pp. 29-30.)

The Supreme Court of California failed to perceive any such distinction between the *Santa Barbara* and the other three cases, and we submit that none exists. Section 22250 of the State Water Code, like Section 22252, which forbids discrimination when water is delivered on the basis of toll charges, expresses a state policy now grounded in Section 3, Article XIV of the California Constitution. State waters shall be put to beneficial use to the fullest extent to which they are capable, without discrimination on the basis of the identity of the landowner. Indeed, as we have seen

(*supra*, p. 43); the Court held in the *Ivanhoe* case that a state statute which purported to permit such discrimination would collide with Article I, Sections 11 and 13 of the California Constitution. Appellants' far-fetched distinction ignores this holding.

The *Albonico* case, as we have seen, *supra*, p. 11, is a proceeding for a writ of mandate to compel the Madera Irrigation District to vacate its action denying exclusion from the district of the Albonicos' land in excess of 320 acres. The trial court entered a judgment in the alternative requiring either that the Albonicos' land in excess of 320 acres be supplied with water by the district or that the land be excluded. The Supreme Court of California held that the district may not deny the Albonicos' land in excess of 320 acres its fair and ratable portion of the water to be distributed. The court therefore modified the judgment by striking therefrom the alternative under which the land might be excluded and, as so modified, affirmed the judgment. (AJS 183.)

In the *Albonico* case the court rested its determination on the *Ivanhoe* and *Madera* cases. In summarizing those cases in the *Albonico* decision, the Supreme Court of California effectively disposed of appellants' contention (Br., pp. 28-42) that its decisions in the *Ivanhoe* and *Madera* cases involve the *capacity of the United States* to enter into the contracts here in question. As we have previously pointed out, the court's decisions in these cases were determinative of the *capacity of the irrigation districts* to enter into the contracts in question. The court stated in *Albonico* (AJS 183):

> "In view of our decisions in *Ivanhoe Irr. Dist. v. All Parties, ante*, p. ..... (..... P. 2d .....), and in *Madera Irr. Dist. v. All Persons, ante*, p. ..... (..... P. 2d .....), where-

in it was held that excess land provisions in similar contracts were improperly included therein, it must be concluded in this proceeding that *the district* may not impose on landowners within the district the land limitations contained in sections 28, 29 and 30 of the contract in question, and that all of the petitioners' lands within the district are entitled to their fair, ratable portion of the water distributed and to be distributed *by the district* for irrigation purposes. (Wat. Code, Sec. 22250.) As the petitioners' lands will thus be [700] benefited by the lawful operations of the district under a proper contract for a supply of water to the district a writ of mandate to compel the exclusion thereof from the district is inappropriate and unnecessary. (Wat. Code Secs. 26728, 26729.)" (Emphasis ours.).

C. CONCLUSION AS TO THE DECISIONS BELOW.

In the present litigation the United States is attempting to proceed by contract with public agencies which are creatures of the State of California. No regulatory or coercive power of the Federal Government is asserted. A valid contract necessarily requires two contracting parties with capacity to make it. The highest court of the state has held that one of the parties to the contracts, namely the respective state agency, lacks such power and, under the California Constitution, could not be granted such power by the L slature. Under the decisions of this Court which have been cited, theretofore, no substantial federal question is presented sufficient to support either the appeals or writs of certiorari.

No action of this Court can provide California irrigation districts with powers which they lack. An opinion of this Court, in the words of *Flournoy v. Wiener*, 321 U. S. 253, 261-262, would "be advisory only, since there is nothing

before" the Court on which it can "render a decision which would have any controlling effect on the rights of the parties."

II. Federal Law Leaves to State Jurisdiction the Capacity of Irrigation Districts to Contract and the Control, Appropriation, Use and Distribution of Water for Irrigation Purposes.

For the reasons set forth under Point I, we maintain that no substantial federal question is presented, that the decisions below rest on adequate non-federal grounds, and that the appeals should be dismissed and certiorari denied. Reserving our position as to this, we proceed, without repeating this reservation, to a consideration of the cases on the assumption that a substantial federal question is involved. We submit, on this assumption, that analysis demonstrates that the federal law itself leaves the pertinent subject matter within state jurisdiction. That is, the federal law itself refers us back to state law.

A. THE FEDERAL STATUTES INVOLVED.

The provisions of the instant contracts are claimed to be authorized and required so far as the Federal Government is concerned by Section 46 of what is known as the Omnibus Adjustment Act of 1926, 44 Stat. 636, 43 U.S.C. 423e, and Section 9(c), (d) and (e) of the Reclamation Project Act of 1939, 53 Stat. 1187, as amended, 43 U.S.C. 485h(c), (d) and (e). The key language, for purposes of the present discussion, is to be found in Section 46 of the 1926 Act, as follows:

> "No water shall be delivered upon the completion of any new project or new division of a project until a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irri-

gation district or irrigation districts *organized under State law * * * and the execution of said contract or contracts shall have been confirmed by a decree of a court of competent jurisdiction.*" (Emphasis ours.)

The foregoing provisions are considered to be amendatory of or supplementary to the original Reclamation Act of 1902, 32 Stat. 388; both the Central Valley Project and the Cachuma Project are considered to be reclamation projects. (App. Br., p. 43.) A second critical starting point in the consideration of these cases is, therefore, Section 8 of the 1902 Act, now codified at 43 U.S.C. 372, 383, providing:

> "That nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: *Provided*, That the right to the use of water acquired under the provisions of this Act shall be appurtenant to the land irrigated, and the beneficial use shall be the basis, the measure, and the limit of the right."

It is important to note that Section 8, above quoted, is but one of a whole series of consistent congressional enactments dealing with water for irrigation purposes which have both preceded and followed the Reclamation Act of 1902. These include, prior to 1902, the Acts of 1866 and 1870, now 43 U.S.C. 661, and the Desert Land Act, of 1877, now 43 U.S.C. 321. In recent years this series of enactments is exemplified

by the Submerged Lands Act of May 22, 1953, 67 Stat. 29, 43 U.S.C. 1311, which, Section 3, reconfirmed state jurisdiction with respect to inland waters; and the Act of July 2, 1956, 70 Stat. 483, 43 U.S.C. 485h-1-5, *which in its Section 4 incorporated verbatim Section 8 of the Reclamation Act of 1902, above quoted, admonishing respect for state water law.*

Note should also be made of Section 208(a), (b) and (c) of the Appropriation Act of July 10, 1952, 66 Stat. 549, 43 U.S.C. 666, which, as to any case in which the United States is joined as a defendant involving the adjudication or administration of state water rights, provides that the United States shall "be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty."

The effect of all of the enactments above referred to has been to confirm the state's authority to deal under state law with the control, appropriation, use and distribution of water for irrigation purposes, subject only to the navigational servitude. The navigational servitude is not involved in this litigation.

B. CONGRESS HAS NOT SOUGHT TO IMPOSE TERMS AND CONDITIONS EXCEPT TO THE EXTENT THAT THEY MAY BE VALIDLY ACCEPTED BY STATE IRRIGATION DISTRICTS IN ACCORDANCE WITH STATE LAW.

From the foregoing, it will be seen at once that what is here involved is simply the validity of purported contracts entered into by the United States, acting by the Bureau of Reclamation, and certain irrigation districts "organized," as Section 46 of the 1926 Act, above quoted, expressly contemplates, "under State law." It is well established that when the United States enters into a contract, its construction is governed by the principles of general contract law. Such contract principles would seem to apply in the present

cases, a *fortiori*, because what is here involved is not even the construction or administration of a contract but the question of its *validity* at the outset. The decisive fact is that one of the contracting parties is organized, precisely as Congress contemplated, not under federal but under state law; and general contract law, as Congress intended, requires that the capacity of a district to enter into a particular contract be tested by the law under which it was organized and exists.

Accordingly, whether or not the question of the validity of these contracts can be said in one sense or another to present a federal question, it seems evident, from the provisions of the statute and general principles of contract law, that the question of the capacity of the state agency to contract will necessarily be resolved by reference to the law of the state. That is, federal law, even if it applies, will import state law in order to test the capacity of one of the contracting parties, the state-created agency.

The action in fact taken by the Bureau of Reclamation under Section 46 of the 1926 Act accords with this analysis. Each of the master contracts in issue provides in substance that the contracting irrigation district shall—

> "file and prosecute to a final decree, *including any appeal therefrom to the highest court of the State of California*, in a court of competent jurisdiction a special proceeding for the judicial examination, approval, and confirmation" of the contract. (Ivanhoe, R. 41-42; Madera, R. 218; Santa Barbara, R. 504.) (Emphasis ours.)[12]

12. The wording of this provision of the Santa Barbara contract varies slightly from the corresponding provisions of the Ivanhoe and Madera contracts, from which the above quotation is taken, but the sense is the same.

It will be noted that the Bureau of Reclamation, by this provision, has interpreted Section 46 of the 1926 Act to require a testing of the validity of the contract in the state courts, under state procedures,[13] and, the inference seems inescapable, under state law. No federal statute provides procedures for the validation of such contracts, and the contracting districts are established, as we have seen, not under any federal law but under such law as the state has chosen to provide.

Similarly, the Ivanhoe contract further provides that it shall not become binding until it has been "confirmed by a court of competent jurisdiction or pending appellate action if *ground* for appeal be laid." (R. 42.) Consistent with the statute, this provision reflects the sense of all of the contracts.

The subject of the contracts—the delivery of water for irrigation—likewise is a matter which Congress has insistently reserved to the jurisdiction of the states, as we have seen from a reference to the controlling statutes, above. And the Bureau of Reclamation has purported to recognize the overriding force of Section 8 of the Reclamation Act. It has publicly stated with reference to the Central Valley Project:

> "The Bureau of Reclamation does recognize and respect existing water rights which have been initiated and perfected or which are in the state of being perfected under State laws. The Bureau of Reclamation has been required to do so by Section 8 of the Reclamation Act of 1902 ever since the inception of the reclamation program administered by the Bureau of Reclamation. The Bureau of Reclamation has never proposed modification of that requirement of Federal law; and on the contrary, the Bureau of Reclamation

13. The Madera contract (R. 218) makes express reference to the validation procedure set out in the California Water Code.

> and the Secretary of the Interior have consistently, through the 42 years since the 1902 act, been zealous in maintaining compliance with Section 8 of the 1902 act. They are proud of the historic fact that the reclamation program includes as one of its basic tenets that the irrigation development in the West by the Federal Government under the Federal Reclamation Laws is carried forward in conformity with State water laws." Quoted in *United States v. Gerlach Live Stock Co.*, 339 U.S. 725, 740-741, fn. 15.

Similarly, the Secretary of the Interior has reported to Congress:

> "In conducting irrigation investigations and constructing and operating projects throughout the West, the Bureau of Reclamation fully recognizes and respects existing water rights established under State law. Not only is this a specific requirement of the Reclamation Act under which the Bureau operates, but such a course is the only fair and just method of procedure. This basin report on the Central Valley is predicated on such a policy." Report of Regional Director, Region II, Bureau of Reclamation, Dec. 1, 1947, approved by the Secretary of the Interior, July 29, 1948, S. Doc. No. 113, 81st Cong., Ist Sess. 39. Quoted in *United States v. Gerlach Live Stock Co.*, 339 U.S. at p. 740, fn. 14.

At the date of the filing of this brief, the Court may judicially notice that a proceeding is pending at Fresno, California, before the California State Water Rights Board, in which the Bureau of Reclamation is attempting to acquire appropriation rights *under state law* to water to be delivered by means of the Central Valley Project.[14]

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14. *In the matter of Applications 23, 234, 1465, 5638, 5817, 5818, 5819, 5820, 5821, 5822, 9369, UNITED STATES OF AMERICA, BUREAU OF RECLAMATION, Applicant*, pending before the State of California—State Water Rights Board. And see *supra*, p. 20, as to prior proceedings of this character.

C. THE DECISIONS OF THIS COURT CONFIRM THAT IT IS THE CONGRESSIONAL POLICY TO LEAVE IRRIGATION MATTERS WITHIN STATE JURISDICTION.

Numerous decisions of this Court may be cited for the proposition that, unless Congress has provided a different standard (as it has not in the present cases), the construction of a contract to which the United States is a party is governed by the principles of general contract law. *E.g., United States v. Standard Rice Co.*, 323 U.S. 106; *Priebe & Sons v. United States*, 332 U.S. 407. Under such principles of general contract law, needless to say, a purported contract is not valid if one of the parties lacks capacity to enter into it. American Law Institute, Restatement of the Law of Contracts, Section 18. The same principles require that the capacity of a juristic person to enter into a particular contract be determined in the first instance by the law of its creation, in this case, as we have seen, the law of California. *E.g.*, American Law Institute, Restatement of the Law of Conflict of Laws, Section 165.

An illustrative case, which we believe correctly applied principles decisive of the present litigation, is *Alameda County v. United States*, 124 F. 2d 611 (9th Cir.). There a contract was involved between the United States and Alameda County under which the latter had agreed to maintain, operate and replace a certain bridge. The state district court of appeal (the Supreme Court of California thereafter denied hearing) held the contract void because it lacked mutuality and exceeded the powers of the county under the State Constitution. The United States then brought suit for specific performance in the federal district court, basing its claims on the federal constitutional power over navigable waters and a Congressional Act of 1910. Sus-

taining the position of the County, as appellant from the district court, the court of appeals pointed out that—

> "The alleged rights sought to be enforced here, are not rights to control navigable waters, but alleged rights to compel operation, maintenance and replacement of a bridge by appellant. Such alleged rights stem not from a constitutional provision, because nothing in the constitution purports to affirm that appellant must operate any bridge, but arise from a contract alleged to have been entered into between appellant and appellee. Any obligation of appellant to operate, maintain and replace the bridge in question is found in the alleged contract, and not in a constitutional provision." 124 F. 2d at p. 616.

Similarly, the court noted that the 1910 statute simply authorized the Secretary of War to enter into contracts concerning various bridges on prescribed terms, but did "not purport to impose any obligation upon appellant" or "to confer on appellant any power whatever." "Likewise, there is nothing in the statute which purports to validate a contract in advance." 124 F. 2d at p. 616. The court therefore held that the power of the county to enter into the contract was governed exclusively by state law, as declared by the California courts in the prior litigation. The court of appeals directed the trial court to enter a decree determining the contract null and void. The Government filed no petition for certiorari.

The application of the principles applied in this case to the present litigation seems unmistakable. Various acts of Congress prescribe terms to be included in contracts with state irrigation districts. They do not purport, however, to require the districts to enter into such contracts, to impose any obligations upon them, to grant them any powers, or to validate such contracts in advance. These matters are

left to state law; and indeed the Secretary of the Interior and the Bureau of Reclamation are directed to conform such contracts to state law. The instant contracts cannot be held valid unless state law gives them validity.

Equally or more significant are the numerous decisions of this Court dealing with the control, appropriation, use and distribution of water for irrigation purposes (from both navigable and non-navigable streams) which confirm the authority of the states with respect to such waters for such purposes.

Mason Co. v Tax Comm'n., 302 U.S. 186, presented the question whether the United States in acquiring ownership had also obtained exclusive jurisdiction over lands within the State of Washington used in connection with the building of the Grand Coulee Dam on the Columbia River. Answering the question in the negative, the Court, speaking by Chief Justice Hughes, noted that in acquiring such lands the United States proceeded under the Reclamation Act of 1902 and continued (302 U.S. at p. 199):

> "That Act was not intended to provide for the acquisition of exclusive federal jurisdiction. The Act itself stated the contrary (§8, 43 U.S.C. 383). It directed the Secretary of the Interior to proceed in conformity with the state laws in carrying out the provisions of the Act and provided that nothing therein contained should be construed as interfering with the laws of the State relating to the control, appropriation, use or distribution of water used in irrigation. The Act has been administered in harmony with this controlling principle that the State should not be ousted of jurisdiction. See *Kansas v. Colorado*, 206 U.S. 46, 92, 93; *Nebraska*

v. Wyoming, 295 U.S. 40, 42; *California Oregon Power Co. v. Beaver Cement Co.*, 295 U.S. 142, 164."[15]

Of the three cases cited by Chief Justice Hughes, *Kansas v. Colorado*, a landmark case in this field, will be considered *infra*, under Point III, and the remaining two cases will be considered at the appropriate points under the present topic.

In *California-Oregon Power Co. v. Beaver Cement Co.*, 295 U.S. 142, the last of the cases above cited, the question was whether Oregon by statute could change the law of riparian rights to the detriment of a grantee of the United States. The case is of particular significance because the Court carefully reviewed the Acts of 1866, 1870 and the Desert Land Act, of 1877 (295 U.S. at pp. 154-158), and confirmed its conclusions as to the force of these laws by a reference to Section 8 of the Reclamation Act of 1902 (295 at p. 164, fn. 2). Sustaining the Oregon legislation, the Court observed (p. 162):

> "If it be conceded that in the absence of federal legislation the state would be powerless to affect the riparian rights of the United States or its grantees, still, the authority of Congress to vest such power in the state, and that it has done so by the legislation to which we have referred, cannot be doubted."

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15. The Court also observed (302 U.S. at p. 206):

> "* * * irrigation—'the reclamation of arid and semi-arid lands'—is an integral part of the federal plan and the reservoirs for the storage of water were to be provided with that end in view. That was set forth as one of the main objectives, as well as the development of power, in the Declaration of Taking filed in the federal court in the condemnation proceedings, and whatever may be said of power development so far as it is incidental to the improvement of navigation, *the reclamation of arid or semi-arid lands has always been regarded as a project which carried with it an appropriate recognition of a continued state jurisdiction. Kansas v. Colorado, supra; Nebraska v. Wyoming, supra.*" (Emphasis ours.)

In *Ickes v. Fox*, 85 F. 2d 294, 298 (D.C. Cir.), the court held:

> "Under the Reclamation Act the United States, in putting in an irrigation enterprise, stands in the same position with relation to the state as a private individual. The waters belong to the state, and the United States never acquires any title therein any more than a private appropriator."

Affirming the decision below in this case, 300 U.S. 82, this Court stated (pp. 94-95):

> "Although the government diverted, stored and distributed the water, the contention of petitioner that thereby ownership of the water or water-rights became vested in the United States is not well founded. Appropriation was made not for the use of the government, but, under the Reclamation Act, for the use of the land owners; and by the terms of the law and of the contract already referred to, the water-rights became the property of the land owners, wholly distinct from the property right of the government in the irrigation works. Compare *Murphy v. Kerr*, 296 Fed. 536, 544, 545. The government was and remained simply a carrier and distributor of the water (ibid.), with the right to receive the sums stipulated in the contracts as reimbursement for the cost of construction and annual charges for operation and maintenance of the works."

Exemplifying this solid line of authority, *Nebraska v. Wyoming*, 295 U.S. 40, another of the cases cited by Chief Justice Hughes, involved the equitable apportionment of certain waters. The Court, in considering a motion of the defendant to dismiss the bill, concluded (p. 43):

> "2. The motion asserts that the Secretary of the Interior is an indispensable party. *The bill alleges, and we know as a matter of law,*[3] *that the Secretary and his*

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[3] "Act of June 17, 1902, c. 1093, § 8, 32 Stat. 390; U.S.C. Tit. 43, § 383."

agents, acting by authority of the Reclamation Act and supplementary legislation, must obtain permits and priorities for the use of water from the State of Wyoming in the same manner as a private appropriator or an irrigation district formed under the state law. His rights can rise no higher than those of Wyoming, and an adjudication of the defendant's rights will necessarily bind him. Wyoming will stand in judgment for him as for any other appropriator in that state. He is not a necessary party." (Emphasis ours.)

Thereafter, the United States intervened in this litigation (304 U.S. 545). In disposing of the controversy and rejecting the claim of the United States to certain unappropriated water, the Court quoted Section 8 of the Reclamation Act of 1902 (325 U.S. 589, 612-613). After reviewing the history of the waters in dispute the Court continued (pp. 613-614):

"All of these steps make plain that those projects were designed, constructed and completed according to the pattern of state law as provided in the Reclamation Act."

The Court then quoted the passage from its decision in *Ickes v. Fox* which we have quoted above, concluding that the Government was "simply a carrier and distributor of the water," with the right to receive "the sums stipulated in the contracts as reimbursement for" costs and charges.

Reference should also be made to *Port of Seattle v. Oregon & W.R.R.*, 255 U.S. 56, 63:

"The right of the United States in the navigable waters within the several States is limited to the control thereof for purposes of navigation. Subject to that right Washington became, upon its organization as a State, the owner of the navigable waters within its boundaries and of the land under the same."

And the decision in *Federal Power Commission v. Niagara Mohawk Power Corp.*, 347 U.S. 239, 252, so far as presently significant, is reflected in the following (p. 252):

> "Riparian water rights, like other real property rights, are determined by state law. Title to them is acquired in conformity with that law."

Finally, the important case of *United States v. Gerlach Live Stock Co.*, 339 U.S. 725, dealt with the impact of Section 8 upon the Central Valley Project, of California. The Court held, rejecting the Government's argument, that the owners of so-called uncontrolled grass lands along the San Joaquin River were entitled to compensation for the drying up of such lands resulting, paradoxically, from the construction by the United States of the Friant Dam and dependent irrigation system. In reaching this conclusion the Court reasoned that whether "Congress could have chosen to take" the land owners' "rights by the exercise of its dominant navigation servitude", without compensation, "is immaterial," since Congress in fact had directed the Secretary of the Interior to proceed under the Reclamation Act of 1902. And by this direction, the Court observed, "Congress elected not 'to in any way interfere with the laws of any State * * * relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder,'" citing Section 8 of the 1902 Act. 339 U.S. at p. 739.

The Court therefore turned, "as that Act bids us, to the laws of the State to determine the rights and liabilities of landowner and appropriator." 339 U.S. at p. 742. Analyzing the 1928 amendment to the California Constitution, Article XIV, Section 3, discussed *infra*, the Court referred to it as "California's basic water law, to which the Federal Rec-

lamation Act defers." 339 U.S. at p. 751. Because claimants' rights were protected under state law, compensation by the Federal Government was required for the damage done them.

Another portion of the *Gerlach* opinion discussed the constitutional power basic to such irrigation undertakings as that of the Central Valley Project. This, however, anticipates Point III of our argument. At this point we summarize:

Congress has chosen, as the decisions of this Court confirm, to leave to state law the capacity of irrigation districts to contract, and the control, appropriation, use and distribution of water for irrigation purposes. Therefore, if the instant contracts are unauthorized by California law, that is the end of the matter and the judgments below should be affirmed.

D. APPELLANTS' CONTENTIONS, IF ADOPTED, WOULD GIVE NO FORCE OR EFFECT TO SECTION 8 OF THE RECLAMATION ACT.

Appellants refer to only three of the cases reviewed under C, above. In what would appear to be a studied disregard of the force of all of these cases, appellants now for the first time in this litigation even *deny* the continuing vitality of Section 8 of the Reclamation Act. See *supra*, p. 28. Attempt is made to discredit the decisions below because

> "In effect, the California Supreme Court's holding is that section 8 compels the United States to give *specific* recognition to water rights established under state law * * *." (App. Br., pp. 58-59.)

We agree that the Supreme Court of California did so hold; but we submit that its holding in this regard, under the authorities cited in C, above, is so plainly correct, even had it been necessary to the decision, as not even to raise a

substantial federal question. The issue between us could not be more sharply drawn.

Appellants' argument in this regard seems to be that Section 8 is superseded by "other and later federal enactments", referring to statutory provisions permitting the United States to acquire property, including water rights, by purchase or condemnation. (App. Br., p. 59.) Appellants implicitly admit at this point that the instant contracts cannot be held valid if Section 8 means what is says and what this Court has uniformly said that it means. That is, appellants implicitly admit that the United States, *pursuant to California law,* cannot obtain the "unlimited title" (in appellants' language) necessary to make effective various provisions of the contracts. Hence, to appellants the condemnation provisions are of great importance. These, they claim, enable the United States to secure that "unlimited title" in the water to be delivered which is essential to the validity of the contracts. (App. Br., pp. 57 61.)

Appellants misconceive the extent of the powers of acquisition and condemnation granted by Congress. The most obvious source of such powers is to be found in Section 7 of the original Reclamation Act. This section provides that "in carrying out the provisions of this act" the United States shall have power to purchase and condemn. Plainly, this section is to be reconciled with Section 8. Section 7 is not an end in itself but a means to an end, and the end is to be found in other statutory provisions, including Section 8. Section 7 and the later provisions relating to eminent domain are given full effect when read to mean *that the United States may secure the title permitted by state law, no more and no less.* A title so limited is precisely the title required to give effect to Section 8.

Similarly, other federal statutory provisions fall into a consistent pattern when the necessity is recognized of reconciling them with Section 8. Various terms are prescribed for inclusion in contracts with irrigation districts, but only to the extent permitted by state law. Section 8 is a direction to the Secretary of the Interior and the Bureau of Reclamation in carrying out the purposes of the Reclamation Act to conform such contracts to state requirements.

It should also be noted, as a second answer to appellants' position, that even if, contrary to fact and the Congressional plan, the United States could secure an "unlimited title" in California waters for irrigation purposes, this would not serve to validate the contracts. That is, "unlimited title" is essential if the contracts are to be held valid; but "unlimited title", without more, is not sufficient to validate them. The reason is that the United States is not disposing of the water directly to the users, but has elected to proceed by contracting with state agencies known as irrigation districts, and to require them by contract to assume certain obligations and impose certain restrictions upon their members. However "unlimited" the title of the United States to the waters, such contracts cannot stand unless the state agencies have authority from the state to enter ino them.

In view of the foregoing line of argument, necessarily resorted to by appellants in their endeavor to sustain the validity of the contracts, it may be helpful to consider the constitutional authority for irrigation projects such as those here involved. The critical question, of course, is not how Congress might have proceeded but how Congress in fact did elect to proceed. Here, as we have emphasized, Congress decided to proceed by way of contract, with full recognition accorded to state jurisdiction over waters for

irrigation purposes. However, in view of the disagreement between the parties as to what the federal law means and as to the overriding force of Section 8, the constitutional bases upon which Congress proceeded may be important in throwing additional light on what it actually has done. To this we now turn.

III. The Available Federal Constitutional Powers Are Ineffective to Require Validation of the Contracts by Force of Federal Law.

A. THE CONGRESSIONAL POWER TO LEGISLATE IN CONNECTION WITH THE CENTRAL VALLEY PROJECT AND THE CACHUMA UNIT IS UNDER THE WELFARE CLAUSE OF THE FEDERAL CONSTITUTION.

United States v. Gerlach Live Stock Co., supra., held that ambiguous congressional declarations concerning the status of the Central Valley Project as an exercise of the federal power over navigation were insufficient to deny compensation to the injured landowner. The Court declared:

> "* * * we need not ponder whether, by virtue of a highly fictional navigation purpose, the Government could destroy the flow of a navigable stream and carry away its waters for sale to private interests without compensation to those deprived of them. We have never held that or anything like it, and we need not here pass on any question of constitutional power; for we do not find that Congress has attempted to take or authorized the taking, without compensation, of any rights valid under state law." 339 U.S. at p. 737.

The opinion comments that the "custom of invoking the navigation power in authorizing improvements appears to have had its origin when the power of the Central Government to make internal improvements was contested and in doubt." The Court then continued with this significant passage:

"It was not until 1936 that this Court in *United States v. Butler*, 297 U.S. 1, declared for the first time, and without dissent on this point, that, in conferring power upon Congress to tax 'to pay the Debts and provide for the common Defence and general Welfare of the United States,' the Constitution delegates a power separate and distinct from those later enumerated, and one not restricted by them, and that Congress has a substantive power to tax and appropriate for the general welfare, limited only by the requirement that it shall be exercised for the common benefit as distinguished from some mere local purpose. If any doubt of this power remained, it was laid to rest the following year in *Helvering v. Davis*, 301 U.S. 619, 640. Thus the power of Congress to promote the general welfare through large-scale projects for reclamation, irrigation, or other internal improvement, is now as clear and ample as its power to accomplish the same results indirectly through resort to strained interpretation of the power over navigation.[10]" 339 U.S. p. 738.

"[10]See Feasibility Report, Secretary of the Interior Ickes to President Roosevelt, Nov. 26, 1935, recommending 'the approval of the Central Valley development as a Federal reclamation project,' and pointing out that the area is served by excellent transportation facilities, that much of its produce is shipped to eastern markets, and that if decreasing productivity as a result of acute shortage of water for irrigation needs were to continue, 'a share of the loss will be suffered by persons not residing in the areas directly affected.'"

The historic case of *Kansas v. Colorado*, 206 U.S. 46, supports the reasoning of the *Gerlach* case to the effect that the enumeration of the powers granted to Congress by Article I, Section 8 of the Constitution (apart from the taxing and spending power contained in the first paragraph thereof) does not include irrigation and the reclamation of

arid lands, and that such federal authority as exists in this regard must be found in Article IV, Section 3, of the Constitution, relating to the authority of the United States with respect to its own property (and, as shown by the *Gerlach* case, in the taxing and spending power).

In this case Kansas sued Colorado to restrain the diversion of waters of the Arkansas River within Colorado. The Federal Government attempted to intervene in the case, although it was not contended that any appropriation of water either by Kansas or Colorado affected the navigability of the Arkansas River. The federal claim was based, instead, on the large area of public lands within the watershed of the Arkansas River, and the federal interest in irrigation as manifested by the Reclamation Act. Reliance was placed, not upon any of the expressly enumerated powers granted the Federal Government, but upon "the doctrine of inherent sovereignty and of implied powers," upon "powers that are not expressly given nor ancillary to any single enumerated power, but which are resulting powers arising from the aggregate powers of the Government."[16] The Court was exhorted to lay down and apply to both states the "proper rule" as to the use of waters for irrigation, "outside of the law of either State," and "*within the maxim salus populi est suprema lex.*"[17]

In a fully reasoned opinion, the Court rejected the Federal Government's contentions, analyzing the matter as follows:

The Federal Government's argument involved "the question," said the Court, "whether the reclamation of arid lands is one of the powers granted to the General Govern-

16. 206 U.S. 46, 67. The argument for the Federal Government is summarized at pp. 64-76.

17. 206 U.S. at p. 75.

ment." (206 U.S. at p. 87.) As to this the Court answered (206 U.S. at pp. 87-88.):

> "Turning to the enumeration of the powers granted to Congress by the eighth section of the first article of the Constitution, it is enough to say that no one of them by any implication refers to the reclamation of arid lands."

Then taking up the power of the Federal Government to care for and dispose of its own property, under Article IV, Section 3 of the Constitution, the Court recognized the federal authority in this regard but held (206 U.S. at p. 92):

> "We do not mean that its legislation can override state laws in respect to the general subject of reclamation. While arid lands are to be found, mainly if not only in the Western and newer States, yet the powers of the National Government within the limits of those States are the same (no greater and no less) than those within the limits of the original thirteen, and it would be strange if, in the absence of a definite grant of power, the National Government could enter the territory of the States along the Atlantic and legislate in respect to improving by irrigation or otherwise the lands within their borders. Nor do we understand that hitherto Congress has acted in disregard to this limitation."

The federal petition in intervention was denied.

Similarly, it is to be noted (*supra*, p. 56, fn. 15) that Chief Justice Hughes in the *Mason* case regarded the reclamation of arid or semi-arid lands as something set apart from navigation and matters incidental to it. Thus, the *Mason* opinion commented that "whatever may be said of power development so far as it is incidental to the improvement of navigation, the reclamation of arid or semi-arid lands has always been regarded as a project which carried with it an appropriate recognition of a continued state jurisdiction." 302 U.S. at p. 206.

B. THE POWER OF CONGRESS TO ACT UNDER THE WELFARE CLAUSE IS LIMITED.

Concluding, then, that with respect to a particular irrigation project, such as either of the two involved in the present case, Congress constitutionally may not, or has deliberately elected not to, invoke "a highly fictional navigational purpose," what consequences follow? One consequence, as we have seen, is that the project has constitutional basis only in the power of Congress to tax and appropriate for the general welfare, as provided by the first paragraph of Article I, Section 8 (and possibly also in the property-disposing power, as provided by Article IV, Section 3). A second consequence must be answered with reference to the nature of the taxing-spending-general welfare and property-disposing powers. May the Federal Government, although limited to these powers, secure an "unlimited title", contrary to the law of the state, to so much of the property within a state as may be necessary to achieve some purpose believed to be related to the general welfare, and then proceed to use and dispose of the property so acquired in defiance of local law? Appellants answer this question in the affirmative, as they must if the contracts are to be held valid. We submit that a negative answer is required, else the taxing-spending and property-disposing powers are converted into authority for the Federal Government to engage in any enterprise it pleases, within the scope of the general welfare, unlimited by the powers delegated to it and in contravention of state law.

If appellants are right, then it is foolish any longer to speak of our Federal Government as one of delegated powers, with all remaining authority reserved to the states; for, if appellants are right, the Federal Government may exercise a power of eminent domain over whatever property

interest it chooses, within the scope of the "general welfare", and may then dispose of such property on federal terms, without regard to and in defiance of the law of the state. If this is now the law, who can doubt that that unique American contribution to political science—federalism—is gone forever? If we are right, on the other hand, then Congress, under the only constitutional powers available to it, may not override state law in any sense now relevant. Congress is bound to honor state law as applied to the capacity of a state agent to contract and to state jurisdiction over its waters for irrigation purposes.

The foregoing analysis also answers the argument of appellants (Br., pp. 22, 60) that the United States must be deemed to have taken, unwittingly, all property rights of the landowners inconsistent with the contract provisions, and that the landowners are remitted to their remedy of compensation. The argument is, of course, highly contrived. But even if the United States had acquired all the property rights of the landowners, it would nevertheless hold them subject to the restrictions on title and use imposed by state law. The United States could not acquire or exercise property rights free of these restrictions, so long as the property rights were obtained solely to carry out the powers granted by the general welfare clause.[18]

We submit that the prior decisions of the Court unquestionably support the proposition that the taxing-spending and property-disposing powers of the Federal Government do not permit it to override state law in any sense pertinent to the present cases. These powers, unlike the specifically-

18. The case of *United States v. Carmack*, 329 U.S. 230, cited by appellants, is inapposite. There the United States was acquiring land for a post office and customs house, under the postal and commerce powers, and not for a use depending solely on the general welfare clause.

enumerated powers, do not carry with them authority to regulate, coerce and override.

As to the spending power, it was debated for 125 years whether the Madisonian or the Hamiltonian view was correct. Madison believed that the power to provide for the general welfare was limited to expenditures in aid of the expressly-enumerated powers given the Federal Government. Hamilton, to the contrary, contended that the spending power was not so restricted, but was a substantive power, limited only by the purpose to provide for the general welfare of the nation. The Hamiltonian view finally triumphed in *United States v. Butler*, 297 U.S. 1; but the Court there also declared the corollary that the spending power could not be so used as to extend the Federal powers of regulation and coercion beyond those enumerated in the Constitution to the point where they interfered with the powers of the states, 297 U.S. at pp. 72-75. Such a corollary was obviously essential, since otherwise a virtually unlimited spending power could be used to obliterate state authority with respect to those matters not delegated to the Federal Government and therefore, under the Tenth Amendment, constitutionally reserved to the States.

Although there was a difference of opinion in the Court as to the ultimate decision in the *Butler* case, there was no difference as to this fundamental limitation on the spending power.

That case involved a short-term contract between the Federal Government and an individual farmer, by which in return for benefit payments the farmer agreed to limit production. The contract was perfectly valid under state law and no contention to the contrary was made. The Court took as its starting point the fundamental that (297 U. S. at p. 73):

> "An appropriation to be expended by the United States under contracts calling for violation of a state law clearly would offend the Constitution."

With this proposition, which is so highly relevant to the present case, the dissenting justices were in accord. They explicitly recognized that the spending power (297 U. S. at p. 87):

> "may not be used to coerce action left to state control."

The point of division in the case was whether the contract there involved, since it was consistent with and did not override state law, nevertheless provided a mask for the exercise by the Federal Government of regulatory and coercive powers. The Court believed that it did and held the contract invalid; a minority of three justices believed that it did not. That the spending power could not be used to override state law or to displace the power of the state legislature was accepted as fundamental by the whole Court.

And the same corollary limiting the use of the spending power necessarily attaches to the power to administer and dispose of "property belonging to the United States" under Article IV, Section 3 of the Federal Constitution, referred to above. Patently, the Federal Government cannot attach to the use or disposition of its property a condition or contractual requirement which will have the effect of overriding the law of a state or displacing its legislative power in a field constitutionally reserved to the states. Speaking of the Government's sale of surplus energy generated at Wilson Dam, Chief Justice Hughes in *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 338 took as a basic assumption that the method employed in disposing of the Government's own property must:

"* * * be consistent with the foundation principles of our dual system of government and must not be contrived to govern the concerns reserved to the States."[19]

The opinion then cites *Kansas v. Colorado, supra.*

A case outside of the subject of irrigation which illumines this field of law is *Hopkins Savings Assn. v. Cleary,* 296 U. S. 315 (opinion by Mr. Justice Cardozo for a unanimous Court). The Home Owners' Loan Act of 1933, as amended, purported to permit certain building and loan associations organized exclusively under state law to convert themselves, without state consent, into federal savings and loan associations. Petitioners were two associations incorporated under and subject to the control of Wisconsin law, which did not permit any such transmutation. Petitioners nevertheless attempted so to convert themselves and the State Banking Commission interfered. The overriding of state law here attempted was defended by the Solicitor General on the ground, among others, that the Federal Act amounted to a lawful exercise of the power of Congress to levy taxes and "spend the proceeds to promote the general welfare of the United States * * *" 296 U. S. at p. 326.

Deciding for the state and holding the Federal Statute unconstitutional as so applied, the Court pointed out that such an invasion of state law could only be justified, if at all (296 U. S. at p. 338):

"* * * in situations where the central government is at liberty (as it is under the commerce clause when such a

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19. Although three opinions were written in the *Ashwander* case, the Court here also was unanimous as to the fundamental limitation on federal power referred to by the Chief Justice. Four justices, concurring, believed the case not properly before the Court, but nevertheless indicated their agreement with the conclusions reached on the constitutional issues (297 U.S. at p. 341). And Mr. Justice McReynolds, dissenting, must have agreed with the limitation on federal power stated by the Chief Justice.

purpose is disclosed) to exercise a power that is exclusive as well as paramount."

Not being an exercise of such exclusive and paramount power, the instant statute could not stand.[20]

Oklahoma v. Civil Service Comm'n., 330 U. S. 127, involved federal grants to Oklahoma for highway construction purposes, conditional in part upon abstentation by the members of the State Highway Commission from an active part in political management or political campaigns. A member of the State Commission nevertheless indulged in such activity, and the United States Civil Service Commission thereupon notified Oklahoma that his removal was "warranted." The condition here imposed did not attempt to override any law of Oklahoma, and the end sought by Congress in imposing the condition was the legitimate and justifiable one of assuring "better public service by requiring those who administer funds for national needs to abstain from active political partisanship" (330 U. S. at p. 143). Moreover, Oklahoma had not legally bound herself—by a contract of 40 years' duration or otherwise—to remove the office holder, and in fact refused to do so. "Oklahoma," the Court pointed out (pp. 143-144), "adopted the 'simple expedient' of not yielding to what she urges is federal coercion." The consequence to Oklahoma of this refusal was simply that federal highway grants would be withheld in an amount equal to two years' compensation of the erring State Commissioner (330 U. S. at p. 133). It was on these narrow facts that the condition was sustained.

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20. And see *Perkins v. Lukens Steel Co.*, 310 U.S. 113, where the Court likened the Government's purchasing power to that of "private individuals and business" (p. 127), and held that the Federal Act there involved did "not present an exercise by Congress of regulatory power over private business or employment" (p. 128).

Similarly, as the Court has made clear from its opinions in other leading cases in this field, the conditions attaching to federal grants which have been sustained have not attempted to override or supersede state law or to tie the hands of the state legislature for any extended period, or at all. *Steward Machine Co. v. Davis*, 301 U. S. 548 (Federal Unemployment Compensation system; no conflict with state law; state free to withdraw at any time); *United States v. San Francisco*, 310 U. S. 16 (federal grant to city on condition subsequent; no conflict with state law; city must comply with condition *or* surrender grant, 310 U. S. at p. 19). And see *United States v. Bekins*, 304 U. S. 27 (revocable consent by state to permit federal law to apply in bankruptcy, where state lacked legislative authority).

Finally, *United States v. Burnison*, 339 U. S. 87, is suggestive of the present problem. There the United States appealed a decision of the Supreme Court of California which held that the state probate code did not authorize testamentary gifts to the United States. This Court did not doubt "that the receipt of gifts, testamentary and non-testamentary, is within the ambit of federal powers." 339 U.S. at p. 90. From this starting point, however, the Government made an argument similar to that outlined by the Solicitor General in his jurisdictional memorandum filed in June, 1957 in the present cases. The Government in *Burneson* argued, *inter alia*, that the California law, as interpreted, violated the supremacy clause of Article VI of the Federal Constitution. The major premise of its syllogism was that a state may not interpose an obstacle to the effective operation of a federal constitutional power. The minor premise was that every authorized activity of the United States necessarily represents the exercise of a federal constitutional power, and that by hypothesis this must be so

of the federal authority to receive testamentary gifts. And the conclusion, so it was argued, followed that a state could not permit its probate law to do other than authorize gifts to the United States. 339 U. S. at p. 91.

Although individual cases appeared to lend support to each link in the foregoing argument, this Court pointed out that the Government failed to analyze correctly the nature both of the federal power involved and the state power asserted. "This argument," said the Court, "fails to recognize that the state acts upon the power of its domiciliary to give and not on the United States' power to receive." 339 U. S. at p. 91. The decision of the Supreme Court of California was affirmed.

By parity of reasoning, it seems clear that in the present cases the state's authority is brought to bear upon the contracting authority of the state-created irrigation agencies, not that of the Federal Government. The contracts are invalid, not because the court below held the United States lacked capacity, but because it held that the state agencies lacked the capacity; and in this field it takes two to make a bargain. Insistence here, as in the *Burnison* case, that a state cannot interpose an obstacle to a federal constitutional power is a misapplication of what in some circumstances is sound constitutional doctrine.

C. CONCLUSION.

We believe it a fair statement that appellants' brief marshalls no decisions of this or any other Court in conflict with the authorities reviewed under Points II, C and III, above. As to II, C, we have pointed out that only three of the cases there discussed do appellants even mention, *supra*, p. 60. As to the cases cited under this, Point III, we can find only one reference in appellants' entire brief which would

seem to suggest any departure from our discussion of the authorities. That is a one-sentence dictum from *Nebraska v. Wyoming*, 325 U. S. 589, 615, quoted and twice referred to by appellants (Br., pp. 24, 60, 80-81) as follows: "We do not suggest that where Congress has provided a system of regulation for federal projects it must give way before an inconsistent state system."[21] Appellants argue, at the pages of their brief above cited, that this sentence demonstrates the Secretary of the Interior and the Bureau of Reclamation may properly override state law.

Although appellants' position forces them to make such an argument, it seems evident that the one-sentence dictum from *Nebraska v. Wyoming* could hardly have the meaning attributed to it. Such a meaning would be in conflict with the entire line of cases discussed under Points II, C and III as well as the decision in *Nebraska v. Wyoming* itself.[22]

From the discussion under Points II and III we submit, therefore, that these conclusions follow: Congress has elected to proceed by contracts made with irrigation districts, created under such law as the state has chosen to provide. The subject matter of the contracts is the use of water

21. To this dictum the researches of the Solicitor General (Memorandum for the United States as Amicus Curiae in Support of Jurisdiction, filed June, 1957) added a single case, *Clackamus County, Oregon v. McKay*, 226 F. 2d 843 (D.C. Cir.), certiorari denied, 350 U.S. 904, which involved neither state waters nor the Reclamation Act.

22. The passage of the *Nebraska v. Wyoming* opinion with which the quoted sentence concludes reads as follows (325 U.S. at p. 615):

> "It is argued that if the right of the United States to these water rights is not recognized, its management of the federal projects will be jeopardized. It is pointed out, for example, that Wyoming and Nebraska have laws which regulate *the charges which the owners of canals or reservoirs may make for the use of water*. But our decision does not involve *those matters*. We do not suggest that where Congress has provided a system of regulation for federal projects it must give way before an inconsistent state system." (Emphasis ours.)

for irrigation purposes, a matter which Congress has determined to leave within state jurisdiction. Accordingly, the present contracts cannot be held valid unless they are authorized by the law of California. If that law does not permit the unlimited title to the waters required by the United States under the contracts, the contracts are invalid. Similarly, if state law does not authorize an irrigation district to enter into such a contract, each such contract is invalid. Federal law, according to the congressional plan, cannot supply the contracting authority with the necessary capacity.

Moreover, under the distribution of powers between federal and state governments provided by the Constitution, Congress could not have taken any course other than to leave these matters to state jurisdiction. Congress cannot here rely upon any specifically enumerated power, other than the power to tax and spend for the general welfare and the property-disposing power. But these powers do not permit the United States to regulate, coerce and override state law in any sense pertinent to the instant cases. The decisions of this Court affirm that, in exercising these powers, respect must be given to state law.

The contracts have been subjected to the test of state law. By that test they are invalid.

IV. The Acreage Limitation Provisions of the Contracts Result in a Denial of Due Process and Equal Protection Under the Fifth and Fourteenth Amendments.

A. THE PROVISIONS CONTAINED IN THE CONTRACTS.

The acreage limitation provisions (R. 36-40, 213-216, 497-501) are practically identical in each of the contracts now before the Court. In order to illustrate the workings of these provisions in a particular instance, we examine the pro-

visions of the Madera contract and its relation to the lands of the Albonicos, who are appellees herein

Phillip and Jane Albonico, husband and wife, owned 1,280 acres within the boundaries of the Madera Irrigation District. (R. 403-4, 411.) Since the formation of this district in 1920 they and their predecessors in interest paid their annual assessments, a portion of which was used to acquire the dam site at Friant, California, and to initiate appropriation of water for the Madera Irrigation District from the San Joaquin River. (R. 301, 220.)

After years of litigation between the Madera Irrigation District and Miller & Lux, finally resulting in a definition of the rights that the district could acquire in the San Joaquin River, it was determined by the State of California in its Central Valley Plan that the dam site at Friant and the appropriative filings of the Madera Irrigation District were necessary for the operation of the Central Valley Project. (AJS 142-43.) When the United States took over construction of the project, a contract was entered into between the Madera Irrigation District and the United States by which the dam site and gravel pit at Friant and the appropriative filings on the San Joaquin River were assigned by the district to the United States. In return for this assignment the United States paid the district the sum of $300,000 in cash, and granted to the district assurances that a canal would be constructed from Friant Dam to serve the lands of the district, and that the district would have a right to acquire a supplemental water right for delivery at points along the Madera Canal averaging 270,000 acre feet of water per year. (R. 220-232.)

This contract, made on May 24, 1939, did not contain any of the acreage limitation provisions which are found in the contracts now before the Court. As appears from the ex-

planatory clauses of the 1939 contract, the United States and the district both recognized that lands within the district were in need of a supplemental water supply, that the district had formulated a plan of putting a dam at Friant to make a water supply available to all the lands within the district, and that the transfer of the dam site and the water filings to the United States was made in the expectation that the United States would construct the Madera Canal and supply a supplemental water supply from Friant Dam through the canal to be made available to the district.

After the execution of the 1939 contract, the Albonicos continued to pay the assessments against their lands within the district, but upon learning the terms of the proposed contract between the United States and the district which was subsequently executed on May 14, 1951, they petitioned for exclusion of all of their lands except 320 acres thereof from the district boundaries. The terms of the contract to which they objected, among others, were the acreage limitation provisions. As applied to their lands these provisions meant the following:

(a) Under the terms of the contract they were now designated as "large landowners" by reason of the fact that they owned more than 320 acres (husband and wife being entitled to 160 acres each).

(b) The contract required them to designate which of their lands were to be considered non-"excess" lands, with the remainder to be considered as "excess" lands. In the event that they failed to make this designation, the district was authorized to make it for them, or if the district failed to designate, then the Secretary of the Interior would make the designation.

(c) In the event that they desired to sell any of their "excess" land, and the sale price were not approved by

the Secretary of the Interior, the land sold would be forever barred from receiving any water from the district or any service from the district.

(d) The district was to agree that it would furnish no water or service to their "excess" land unless the Albonicos executed a contract in which they agreed to sell all of their "excess" land under terms and conditions satisfactory to the Secretary of the Interior at a price approved by the Secretary of the Interior and fixed by appraisers, in the selection of whom the Albonicos had no voice, or, failing such a sale, the sale would be made by the Secretary of the Interior. In making the appraisal for any sale of "excess" lands no value was to be given the lands on account of the existing or prospective possibility of securing water or service from the distribution system of the district.

The Albonicos further ascertained that:

> "* * * the administrative procedure usually adopted has been to refuse to deliver water to any lands, excess or non-excess, until the owner of the excess land has executed a recordable contract agreeing to dispose of the excess." (Land Ownership Survey on Federal Reclamation Projects, Department of the Interior (1946), p. 47, Exh. 47 in *Madera*, Rep. Tr. 43.)

At the hearing before the board of directors of the district on the Albonicos' petition for exclusion of their "excess" land, evidence was introduced which showed that the lands to be excluded would not be benefited by the operations of the Madera Irrigation District, if the district refused those lands a water service. No evidence was introduced to show that the lands would be benefited by the operation of the district, if a water supply was refused to them. (R. 412.)

B. THE ACREAGE LIMITATIONS ARE UNWORKABLE, UNREASONABLE AND ARBITRARY WHEN APPLIED TO AN ESTABLISHED AGRICULTURAL ECONOMY.

As the court in *Ivanhoe* pointed out (AJS 42), the acreage limitation provisions, and other similar limitations found in congressional acts, reach the desired end in situations where the Government is providing free land and water supplies to homesteaders. An attempt to apply the limitation provisions, however, to an established agricultural economy results in hardships and inequities. The trial courts specifically found that the acreage limitation provisions of the contracts were unworkable, unreasonable and arbitrary. (R. 156, 333-34.)

Insofar as the districts are concerned in laying out their distribution systems, they have no way of knowing whether "excess" land will ever become non-"excess," or whether non-"excess" land will become "excess." Where a large block of land is held by a single owner who has not signed a recordable contract at the time of the design and construction of the system, the district is at a loss to know whether to provide lateral systems for each 160 acre parcel owned by him or to provide service only for his non-"excess" land. If the district chooses the former course, the laterals may lie dormant for years. If it chooses the latter course, the land may be sold to non-"excess" holders who would then have no lateral system to supply them. This problem is magnified when we realize that the size and carrying capacity of the main lateral distribution ditches depend upon the number of acres that must be served from that particular ditch.

The greatest hardship and inequity, however, falls upon the individual farmer. Let us again examine the position of the Albonicos. For 31 years they had paid assessments to

the Madera Irrigation District for the express purpose of providing a water supply for all of their land. After the execution of the contract here in question, 960 of their 1,280 acres continued to be assessed at the same rate as their other land, although denied a water supply from the district. (R. 301.)

Pipelines that have long been established and used for the irrigation of lands within the district now must be abandoned because they feed "excess" as well as non-"excess" lands. The development of their non-"excess" lands for a supply from the district is also jeopardized because upon the death of either of the Albonicos, if the survivor succeeds, immediately one-half of their 320 acres becomes "excess" land and the water supply and service from the district is denied to that portion. The survivor, however, faces a more serious problem than this, that is, forfeiture of the "excess" 160 acres to the United States, if it is not sold at a price approved by the Secretary of the Interior within a five year period from the date of his spouse's death. This, at least, we understand to be the position taken by the United States, claimed to be based upon Section 3 of the Act of August 9, 1912, as amended by the Act of July 11, 1956 (37 Stat. 265, 70 Stat. 524, 43 U.S.C. 544), which provides:

> "* * * but any such excess land acquired by foreclosure or other process of law, by conveyance in satisfaction of mortgages, by inheritance, or by devise, may be held for five years and no longer after its acquisition, and water may be temporarily furnished during that time; and every excess holding prohibited as aforesaid shall be forfeited to the United States by proceedings instituted by the Attorney General for that purpose in any court of competent jurisdiction."

As we have previously pointed out in this brief, the Supreme Court of California determined the constitutionality of the acreage limitation provisions solely in relation to the California Constitution. For that reason, among others, we do not feel that this Court should assume jurisdiction of these cases. In the event jurisdiction is assumed, however, we point out that the provisions of the contract when applied to irrigation districts and landowners therein constitute a deprivation of property under the due process clauses of both the State and the Federal Constitutions.

We have before us a situation which involves the power and right of an irrigation district to enter into the contracts here in question. It must be remembered in this connection that an irrigation district is empowered to assess and in practice does assess all of the lands within its boundaries on an *ad valorem* basis on account of the costs and expenses that it incurs under the contract with the United States. (R. 301.) Thus, we have quite a different question from what we would have if the United States were contracting directly with individuals and imposing the limitations where the individuals had the choice of contracting or not. In the application of the acreage limitation provisions in a contract with an individual farmer, it at least could be argued that the farmer had the choice of accepting the so-called "benefits" under the contract in return for the imposition of the limitation provisions upon his land. This choice is not present to a landowner within the boundaries of an irrigation district, which decides whether or not to contract in a manner which may be contrary to the wishes of the individual landowner. If the landowner resides outside the boundaries of the district, as did McCracken, he has absolutely no voice in determining whether or not the acreage limitation should be applied to his lands within the bounda-

bility that later you may wish to change your designation of non-excess land, the appraisal board will appraise all your land in order to facilitate a redesignation at a later date if it becomes desirable.

"If you have questions, it is recommended that you contact your District Board of Directors and discuss with them the designations you plan to make. Naturally, I or one of my staff will be glad to answer questions or to discuss the procedures with you at any time.

"Sincerely yours,

"/s/ R. W. SMITH
"R. W. Smith
"Acting District Manager".

(McCracken Exhibit 80, *Ivanhoe*, Rep. Tr. 71, April 3, 1951.)

ries of the district. (Water Code, Section 20527; R. 154.)

Before the due process clauses of either the State or the Federal Constitution are invoked, it is, of course, necessary to determine what property right is affected. The Supreme Court of California found the acreage limitation provisions unconstitutional as a denial of due process and equal protection under the State Constitution, upon the basis that they deprived the districts, and the landowners within, of the following types of property rights either specifically referred to by the court or necessarily implied by its discussion:

(1) The inchoate right of landowners within districts to receive their just portion of waters held by the state in trust for its people. (AJS 32-33.)

(2) The right to receive their just proportion of the waters secured by the Madera and Ivanhoe Irrigation Districts for the irrigation of lands in the districts. (AJS 29.) This right to receive their just proportion of the water of the districts is more than a mere statutory right, as is enunciated by Section 22250 of the Water Code; the bringing of such rights to fruition is the basic purpose for which an irrigation district is formed. The leading case upon this point is *Jenison v. Redfield*, 149 Cal. 500. There the court stated:

> "The whole object of the legislation authorizing the organization of irrigation districts is to enable owners of lands susceptible of irrigation from a common source, and by the same system of works, to form a district composed of *such lands*, which district when formed is a public corporation for the sole purpose of obtaining and distributing such water as may be necessary for the irrigation *thereof, thus enabling each one to have for his land in the district, the benefit of a common system of irrigation*, and bringing about the reclamation of the land of the district from aridity to a

condition of suitability for cultivation." (P. 503; emphasis in part the court's, in part ours.)

See also *Lindsay-Strathmore I. Dist. v. Superior Ct.*, 182 Cal. 315, 335-36.

(3) The right to own, use, acquire, purchase, sell, convey, dispose of by gift or testate succession, till and cultivate land, subject only to lawful restrictions.

(4) The inchoate right of the landowners in the *Madera* and *Albonico* cases to receive their proportionate share of the waters of the San Joaquin River covered by the applications to appropriate water which were filed by the Madera Irrigation District and assigned to the United States under the 1939 contract. This inchoate right, together with their rights in the dam site and gravel pit which were also assigned to the United States by the district, have now, by the 1939 contract, been converted into a right to receive a water supply from the United States through the district pursuant to the terms of that contract. It should be remembered in this regard that nowhere in the 1939 contract is there any provision limiting the use of the water supply to be furnished by the United States to non-"excess" lands, but to the contrary the contract speaks of furnishing a water supply for all of the lands lying within the boundaries of the district. (R. 220.)

(5) The right of the landowners within all of the districts to receive a benefit for any assessment levied by the district upon their lands. *Fallbrook Irrigation District v. Bradley*, 164 U.S. 112.

If we assume for argument that a federal question is presented and we are required to apply the doctrines of the equal protection and due process clauses of the Federal Constitution to the limitations herein questioned, we submit

that the acreage limitations when applied to contracts with irrrigation districts must fail.

While it could be argued that the Fifth Amendment to the Constitution of the United States should be brought into play in view of the fact that the United States is one of the contracting parties, insofar as the landowners of the districts are concerned the district itself is the contracting entity which enforces the provisions of the contract and, it being a state agency, the Fourteenth Amendment of the Constitution of the United States would be the applicable federal provision. However, we invoke the protection of the Fifth Amendment to the extent applicable.

In the case at bar we have a taking of the vested rights of property heretofore described by the imposition of the land limitation provisions in the contracts with the districts:

(1) The right of free ownership, use and disposition of land has been destroyed. After the execution of the contract, a landowner is not entitled to sell any of his excess land except at a price approved by the Secretary of the Interior; if he does so, the land is forever barred from receiving water or service from the district. As a practical matter this means that every acre of "excess" land within every irrigation district in the Central Valley Project must be sold at a price approved by the Secretary of the Interior. This provision of the acreage limitation portions of the contract is so often overlooked that it bears further explanation. The contracts specifically provide that even if an excess landowner does *not* sign a recordable contract, he still cannot sell his excess land at a price above that fixed by the Secretary of the Interior. If this provision is disregarded and the sale price is not approved by the Secretary, then the purchaser of the land is forever barred from receiving

services or water from the district. (R. 213, 214.) To say that this is not a restriction on the power to dispose of land is to ignore the practical aspects of sales of land within an irrigation district. No purchaser in his right mind would acquire land within the boundaries of a district which is subject to district assessments but is forever barred from receiving water or service from the district.

(2) The right of free succession has been unreasonably restricted. After the execution of the contract, let us assume that a landowner within an irrigation district, receiving project water, inherits additional land, also receiving project water, and that his combined holdings thereafter exceed 160 acres. The land so acqured by inheritance, to the extent of the excess of the total over 160 acres, must be disposed of within five years at a price set by the Secretary of the Interior, or the land is forfeited to the United States. Such, at least, we understand to be the Government's view of the effect of the Act of August 9, 1912, as amended, *supra*, p. 81.

(3) The right to have benefits in return for assessments has been disregarded. The landowner is now denied water or service from the district for his excess lands, but they remain subject to the district assessment. In *Albonico*, the court specifically found as a fact that unless water was delivered to the excess lands of the Albonicos they would not receive any benefit from the operation of the district. (R. 412.) In this connection the argument is sometimes used that lands which do not receive a direct benefit from the district operations nevertheless receive an indirect benefit by an increase in their value due to district operations. Such, however, is not the case under the terms of the contracts now before the Court, because the contracts specifically limit the sale price of the "excess" land to a price

which does not reflect any present or prospective benefit that the land would receive by reason of the project, its works, or any water delivered therefrom. (R. 214.)

(4) The right to a proportionate share of district water has been contravened. After the execution of the contract, all lands in excess of 160 acres owned by an individual within these districts are deprived of a proportionate share of the district's water supply unless the owner accedes to a sale at a price over which he has no control. (R. 34.) This provision of the contract completely thwarts the very purpose for which the district was formed. Excess land is deprived of irrigation from the common source (the project works). Water Code, Section 20700.

(5) The right to receive a fair share of state waters has been overridden. The contract precludes landowners from receiving state-controlled water for their lands in excess of the arbitrarily-prescribed limits.

It would seem from the foregoing examples that the property rights of the landowners within the districts here in question have been impaired and taken without due process of law. We believe that this is especially true where the district, as the contracting agency for the landowner, gives the landowner no choice in determining whether or not his land shall be subject to the provisions in question, while at the same time the district levies assessments upon his lands, whether "excess" or non-"excess". In view of the finding of the trial court in the *Albonico* case that the "excess" lands would not be benefited by the operations of the district without the delivery of water to those lands, we feel that the case comes peculiarly within the due process rule. The assessments levied by an irrigation district are in the nature of special assessments: See *Fallbrook Irrigation District v. Bradley, supra,* 164 U.S. 112, 162. This

Court, in discussing the benefits which must accrue to property in order to authorize a special assessment, stated in *Norwood v. Baker*, 172 U.S. 269:

> "In our judgment the exaction from the owner of private property of the cost of a public improvement in substantial excess of the special benefits accruing to him is, *to the extent of such excess*, a taking, under the guise of taxation, of private property for public use without compensation." (P. 279; emphasis the Court's.)

The acreage limitation provisions of these contracts also constitute a denial of equal protection of the laws. In *Shelley v. Kraemer*, 334 U.S. 1, this Court laid down the applicable rule:

> "It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own and dispose of property. Equality in the enjoyment of property rights was regarded by the framers of that Amendment as an essential precondition to the realization of other basic civil rights and liberties which the Amendment was intended to guarantee." (P. 10.)

The reasoning of the Court in that case fits the facts in the case at bar. The plan of operation of the district discriminates between the owners of the land who have holdings of 160 acres and less and those who have holdings of more than 160 acres, without any rational justification. *Yick Wo v. Hopkins*, 118 U.S. 356.

In re Owl Creek Irr. Dist., 71 Wyo. 30, opinion on denial of rehearing, 71 Wyo. 70, held such contracts unfair and unconscionable. No review by this Court was attempted.

Appellants seek to escape the force of the foregoing well-

settled principles by claiming that the projects involved constitute a mere subsidy by the Federal Government to the landowners within the irrigation districts, and for that reason the acreage limitations may be validly imposed.

To support their argument in this regard quotations from a letter by Congressmen are used to paint a distorted picture of the true facts. (App. Br., p. 53.) The expedient used to reach the results set forth in appellants' brief is to charge to the landowner the cost of the facilities installed to produce power, and then to claim that the revenues received from power sales constitute a "subsidy" to him. An examination of the facts shows the fallacy of this reasoning.

The Central Valley Project is a multi-purpose project. That portion of the cost of the project which is attributable to flood control, recreation and fish and wild life preservation is nonreimbursable under Federal law. The remaining portion of the cost of the project is reimbursable and is paid from two sources, the charge to the irrigator for delivering water and the charge to the power user for delivery of power. See Sen. Doc. 113, 81st Cong., 1st Sess., Exh. 56 in *Madera*, Rep. Tr. 43. While it is true that without the power features the cost of producing irrigation water would be greater, it is also true that without the irrigation features the cost of producing power would be greater. In all project planning, whether on a state or a federal level, wherever possible multi-purpose projects are inaugurated and used because they produce both power and irrigation water at a cheaper rate than would be otherwise available. To say that the irrigator is being subsidized from power revenues is no more true than to say that the power user is being subsidized from irrigation revenues. The facts are that under a multi-purpose project both irrigation water

and power can be produced at a lower rate than under a single purpose project for either water or power alone.

Appellants may contend that the interest-free use of federal funds for the construction of the irrigation features of the project constitutes a subsidy. Even this so-called subsidy is wholly fictitious. It is contemplated that the entire cost of the irrigation features will be recouped over the forty-year life of the contracts. Yet neither the statutes under which the contracts were written nor the contracts themselves provide for a cessation or reduction of charges for water after the expiration of the contract periods. Consequently, for all that appears in the present contracts, the United States will receive additional funds from water users after these costs have been fully recovered. (McCracken Exh. 52, p. 734, Rep. Tr. 87, April 3, 1951.) In addition to these charges to water users, the United States continues to derive revenue from power users. To say that interest is not charged is to indulge in semantics. The United States will actually derive revenues far in excess of the capital costs, whether such excess be called interest or something else. Congress has attempted to make provision for this situation (see *supra*, p. 40, fn. 10), but its action is not reflected in the present contracts.

Viewed in this light the so-called subsidy to the irrigator disappears, and does not authorize the arbitrary and discriminatory requirements of the acreage limitation provisions, nor could it justify the taking of the property rights we have heretofore discussed without due process of law.

We do not believe that the Court will find it necessary to resolve the grave constitutional doubts which we have suggested in this Point IV of our brief, particularly in view of the long-settled rule that such questions will be

approached and decided only when they are absolutely necessary to a decision. Cf. *American Communications Assn. v. Douds*, 339 U.S. 382, 407. We submit that dismissal of these appeals or affirmance of the court below is compelled by the considerations advanced under our Points I, II and III. However, in view of the broad scope with which appellants seek to invest these cases, the foregoing brief outline of well-settled constitutional principles and their application to the present cases has been presented. Such principles furnish additional grounds for affirmance.

CONCLUSION

For the reasons stated, the appeals should be dismissed and certiorari denied. If, on the contrary, the Court should believe that substantial federal questions are presented, the judgments below should be affirmed.

Other alternatives would be presented only in the event that, contrary to our contentions, the Court does not dismiss, deny or affirm. Even in that event the Court would not be warranted in ending the litigation by reversing the judgments below. Questions of state law would still remain for determination by the Supreme Court of California, including if necessary issues heretofore left undecided.

Dismissal of the appeals and denial of certiorari or, as the case may be, affirmance of the judgments below, will not mean, we submit, that the Central Valley Project or the Cachuma Unit will fall into disuse. Dismissal, denial or affirmance, on the contrary, will free both Washington and Sacramento from the restrictive and outmoded concepts

with which their dealings have been entangled. The way will then be open for new arrangements or contracts which comply with state law and which are fair both to the Federal Government and the people of California.

Respectfully submitted,

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March, 1958

(Appendix Follows)

Appendix

"UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Reclamation Region 2
Tulare Basin District
318 Patterson Bldg.
Fresno, Calif.

November 1, 1949

Registered Mail Return Receipt Requested

"Mr. Courtney McCracken
c/o Hotel Johnson
Visalia, California

"Dear Mr. McCracken:

"The water service contract between the Ivanhoe Irrigation District and the Bureau of Reclamation provides that every landowner within the district may receive his fair share of Friant-Kern Canal water up to enough for 160 acres per individual owner in accordance with Reclamation Law. However, when more than 160 acres of irrigable land are held per individual owner, the excess land provisions of the contract apply to the use of such water on the land in excess of that amount. The excess land provisions do not place any restriction on the amount of land an individual may own or on the use of water he may get from some other source. The limitations apply to the use of water delivered from the Friant-Kern Canal, a part of the Central Valley Project. There are two fundamental provisions which require that:

"1. If excess land is sold, it is not to receive water from the Friant-Kern Canal unless the purchase price involved in such sale is not more than the value established by an unbiased, three-man appraisal board which will appraise the land on the basis of its current market value with no consideration to any increment which may have occurred because of availability of water through Federal Reclamation structures, and;

"2. Water made available to your district, pursuant

to the District—Bureau of Reclamation contract may be furnished to excess land providing the landowner executes a recordable contract with the Government agreeing to dispose of his excess land within ten years at not more than the appraised value established by the appraisal board. Such a recordable contract would provide that if the landowner does not sell his excess land in ten years, the Secretary of the Interior may sell it for him at the appraised price and under such terms and conditions as are satisfactory to the owner. If the landowner does not desire to receive Friant-Kern Canal water for his excess land, he does not need to sign a recordable contract.

"In order to administer these two fundamental provisions, the Ivanhoe Irrigation District-Bureau of Reclamation contract requires that each large landowner shall designate the 160 acres to which he is entitled water without restriction. The land so designated is then known as his 'non-excess' land and is not affected by the excess land provisions and does not require the signing of a recordable contract to receive Friant-Kern Canal water. The stipulations of the contract are that large landowners shall designate their non-excess land within a period of 30 days after notification by the Government, and that if the owner fails to designate his non-excess land, the District will do it for him; or finally, that in the event both the landowner and the District fail to act, it will be designated by the Government. The contract also provides that all 'excess' land will be appraised, so that it readily may receive water in the event the owner desires to sell it or to sign a recordable contract.

"It is our understanding that you own approximately 285 acres of irrigable land in the Ivanhoe Irrigation District and the purpose of this letter is to formally request that within the next 30 days, you designate the 160 acres which

you wish to have considered non-excess for which there will be no restriction for water delivery under Reclamation Law. Would you please inform the Ivanhoe Irrigation District, by letter of transmittal, in duplicate, the 166 acres you desire to designate to receive project water, in accordance with Article 36(a)(ii) of the Water Service Contract.

"It is recognized that at some future time the construction of a distribution system or some other logical reason may make it desirable for you to change the tract of land which you wish to have considered as 'non-excess' and to which there will be no restrictions regarding the delivery of Friant-Kern Canal water. Ordinarily, such a redesignation will be allowed providing the contracting authority for the Government is assured that such a request is reasonable.

"An appraisal board is being organized now and will consist of one member who is a staff appraiser for the Bureau of Reclamation; one member who is designated by the Ivanhoe irrigation District; and a third member selected by the first two. They will want to proceed as rapidly as possible with the appraisals. The board will want to contact you when appraising the land and you should take that opportunity to describe to them any unusual values or conditions peculiar to your land. For your information, reappraisals may be made at any time at either your request or at the request of the Government in order to keep the appraisal price in line with current land values, or take into account improvements on the property subsequent to the initial appraisal. The cost of the appraisal will be at Government expense. If reappraisals are desirable, the first reappraisal made at your request and all reappraisals made at the Government's request, will be at Government expense, but if you request more than one reappraisal, a nominal charge will be made to help defray expenses. Because of the possi-

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In the Supreme Court of the United States

OCTOBER TERM, 1957

THE IVANHOE IRRIGATION DISTRICT, et al., *Plaintiffs and Appellants,* vs. ALL PARTIES AND PERSONS, etc., *Defendants and Appellees.*	No. 122
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THE SANTA BARBARA COUNTY WATER AGENCY, et al., *Plaintiffs and Appellants,* vs. ALL PARTIES AND PERSONS, etc., *Defendants and Appellees.*	No. 125

On Appeal from the Supreme Court of the State of California

Appellees' Reply to Brief for the United States as Amicus Curiae

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SUBJECT INDEX

Page

Argument 3

I. This Court Should Refuse Jurisdiction Because the Judgment, in Each Case, Rests on an Adequate Non-Federal Basis and No Substantial Federal Question Is Presented 3

II. Federal Law Leaves to State Jurisdiction the Capacity of Irrigation Districts to Contract and the Control, Appropriation, Use and Distribution of Water for Irrigation Purposes 10

III. The Available Federal Constitutional Powers Are Ineffective to Require Validation of the Contracts by Force of Federal Law 15

IV. The Government's Assertions of Power Over California Water Are Untenable 21

A. The United States Is Not Sovereign Over the Internal Waters of Any State 23

B. The Rights of the United States as Landowner, Under State Law, Are Wholly Inadequate to Support the Powers Asserted 27

C. Rights Acquired by Purchase or Condemnation Are Likewise Inadequate 29

Conclusion 31

Cases	Pages
Ashwander v. Tennessee Valley Authority, 297 U.S. 288	19, 20
California Oregon Power Co. v. Beaver Cement Co., 295 U.S. 142	24, 28
Cardwell v. American River Bridge Company, 113 U.S. 205	24
Duckworth v. Watsonville Etc. Co., 150 Cal. 520	27
Federal Power Commission v. Niagara Mohawk Power Corp., 347 U.S. 239	24
Federal Power Comm'n v. Oregon, 349 U.S. 435	25
Fort Leavenworth R.R. Co. v. Lowe, 114 U.S. 525	24
Fox River Co. v. Railroad Commission, 274 U.S. 651	21
Hopkins Savings Assn. v. Cleary, 296 U.S. 315	19
Kansas v. Colorado, 206 U.S. 46	20, 26
Kohl v. United States, 91 U.S. 367	19
Leslie Miller, Inc. v. Arkansas, 352 U.S. 187	18
Markham v. Cabell, 326 U.S. 404	12
Mason Co. v. Tax Comm'n, 302 U.S. 186	24
McDonald v. Thompson, 305 U.S. 263	12
Oklahoma v. Civil Service Comm'n., 330 U.S. 127	19
Palmer Etc. v. Railroad Commission, 167 Cal. 163	26
Pollard's Lessee v. Hagan, 3 How. 212	23
Port of Seattle v. Oregon & W. R.R., 255 U.S. 56	24
Public Utilities Commission of the State of California v. United States, No. 23, this Term, decided March 3, 1958	18
Steward Machine Co. v. Davis, 301 U.S. 548	19
United States v. Ahtanum Irrigation District, 236 F.2d 321 (9th Cir.), certiorari denied, 352 U.S. 988	25
United States v. Bekins, 304 U.S. 27	19
United States v. Butnison, 339 U.S. 87	19
United States v. Butler, 297 U.S. 1	19, 20
United States v. California, 332 U.S. 19	23, 24

Pages

United States v. Carmack, 329 U.S. 230 19
United States v. Menasche, 348 U.S. 528 12
United States v. Rio Grande Irrigation Co., 174 U.S. 690 ..... 24, 25
United States v. San Francisco, 310 U.S. 16 19
United States v. Walker River Irr. Dist., 104 F.2d 334 (9th Cir.) 25

Wilson v. Cook, 327 U.S. 474 24
Winters v. United States, 207 U.S. 564 25

CONSTITUTIONAL PROVISIONS

California Constitution:
Article XIV, Section 3 27
Article XIV, Section 4 8

United States Constitution:
Article I, Section 8, Clause 3 24
Fifth Amendment 2
Fourteenth Amendment 2

STATUTES

CALIFORNIA:

California Government Code, Section 126(h) 8

California Water Code:
Division 2, Part 2, Chapter 2 27
Section 1252 21
Section 1253 27
Section 1610 22
Section 23200 3

FEDERAL:

Act of July 2, 1956, Section 4, 70 Stat. 483, 43 U.S.C. 485h-4 ..... 13, 26

Act of July 9, 1870, Section 17, 16 Stat. 217, Rev. Stat. 2340, 43 U.S.C. 661 ..... 26, 28

Act of July 10, 1952, Section 208(a), 66 Stat. 549, 43 U.S.C. 666(a) 13, 26

Pages

Act of July 26, 1866, Section 9, 14 Stat. 251, Rev. Stat. 2339, now 30 U.S.C. 51 and a part of 43 U.S.C. 661 ..... 26, 28

Act of September 9, 1850, Section 1, 9 Stat. 452 24

Boulder Canyon Project Act, Section 18, 45 Stat. 1063, 43 U.S.C. 617q 26

Desert Land Act, of 1877, 19 Stat. 377, as amended, 43 U.S.C. 321 ..... 24, 25, 26, 28

Federal Power Act, Sections 9(b), 27, 41 Stat. 1063, 16 U.S.C. 802(b), 821 26

Omnibus Adjustment Act of 1926, Section 46, 44 Stat. 636, 43 U.S.C. 423e 11, 13, 14

Reclamation Act of 1902, 32 Stat. 388:

Section 5, 43 U.S.C. 431 ..... 11, 12, 13

Section 8, 43 U.S.C. 372, 383 ..... 9, 10, 11, 12, 13, 14, 15, 2

Taylor Grazing Act, Section 3, 48 Stat. 1269, as amended, 43 U.S.C. 315b 26

MISCELLANEOUS

Assembly Concurrent Resolution No. 2 (Stat. 1953, Ch. 4, p. 405) 6

Senate Concurrent Resolution No. 8 (Stat. 1953, Ch. 4, p. 272) 6

Senate Concurrent Resolution No. 80 (Stat. 1953, Ch. 196, p. 4235) 8

Senate Joint Resolution No. 35 (Stat. 1953, Ch. 159, p. 4170) 8

2 Sutherland, Statutory Construction, 3rd ed., Section 4705 12

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THE IVANHOE IRRIGATION DISTRICT, et al., *Plaintiffs and Appellants,* vs. ALL PARTIES AND PERSONS, etc., *Defendants and Appellees.*	No. 122
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On Appeal from the Supreme Court of the State of California

Appellees' Reply to Brief for the United States as Amicus Curiae

Appellees' position, as fully developed in our main brief, may be quickly summarized as follows: Since the decisions below rest on an adequate state basis, the appeals should be dismissed and certiorari denied (Point I).

If a substantial federal question is deemed to be involved, the Supreme Court of California correctly answered it,

because Congress has deliberately elected to proceed solely on the basis of contracts with state-created agencies, and to leave the control, appropriation, use and distribution of water for irrigation purposes within state jurisdiction (Point II).

Indeed, pursuant to the power available to it—that is, the power to tax and spend for the general welfare (and, perhaps, to acquire and dispose of property)—Congress under the Federal Constitution could not have done otherwise than to respect state jurisdiction in these matters (Point III).

Further, consideration of the grave constitutional questions presented under the Fifth and Fourteenth Amendments provides additional grounds in support of the decisions below (Point IV).

With a single exception referred to in the last sentence of this paragraph, nothing in the brief for the United States as *amicus curiae* challenges the logic of the foregoing analysis. That is, it is not contended that if appellees are right as to Point I, the appeals should not be dismissed and certiorari denied; or that if appellees are right as to Points II or III or IV, the judgments below should not be affirmed. Accordingly, we will deal with the Government's arguments under the point headings stated at the opening of this brief (Points I, II and III, *infra*).[1] The single exception refers to the argument, introduced in the concluding two pages of the Government's brief, that the United States has title to or "paramount rights" in all California waters; this we deal with under Point IV, *infra*.

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1. Since the Government makes no attempt to meet the arguments under the Fourteenth and Fifth Amendments advanced in Point IV of our main brief, we do not deal further with that subject in this brief.

ARGUMENT

I. This Court Should Refuse Jurisdiction Because the Judgment, in Each Case, Rests on an Adequate Non-Federal Basis and No Substantial Federal Question Is Presented.

The basis for denial of review by this Court was fully presented in appellees' motion to dismiss and supporting brief, and in our main brief at pages 29-47. The Supreme Court of California held that, within the meaning of the pertinent Section 23200 of the State Water Code, the instant purported contracts contain terms not based on "applicable" law, *within the meaning of the state statute*. Indeed, the court reasoned that had the Legislature attempted to authorize contracts with such provisions, it would have run afoul of both *state* constitutional and statutory law. (See, *e.g.*, AJS 50-51, 56, 58-59; appellees' main brief, pp. 37-38, 42-43.)

The United States, like appellants, nevertheless insists that the decisions below are based on the court's determination of the invalidity of federal law, the former's brief for the most part adopting the latters' on this point. (U.S. Br. pp. 31-34.) As we have pointed out, this contention will not survive analysis. One passage of the Government's brief in this connection, however, is sufficiently arresting to require comment. After repeating the erroneous argument that the court below held the contracts invalid on the ground that the Bureau of Reclamation lacked the authority under the Federal Constitution to require certain of their terms, the brief continues (p. 34):

> "The result of this approach was that the court did not order the irrigation districts to refuse to accept reclamation water, but instead held that the conditions on the delivery of the water were illegal. If the court had proceeded on a state ground, it would have barred the state agencies from receiving the federal bounty;

> proceeding, as it did, on the federal ground, the court held them entitled to contract for the water but held the disputed conditions illegal. It thus appears that the California court consciously and purposely rested its decision on a federal ground rather than on an interpretation of its own laws."

It is true, as the foregoing passage states, that the Supreme Court of California did not bar state irrigation districts from accepting "reclamation water". The court below recognized the authority of irrigation districts, under state law, to contract with the Federal Government for water delivery and related matters; but the contracts were held invalid because in certain particulars they simply failed to conform to state law.[2] This, the foregoing-quoted passage seems to assert, shows that the court below "consciously and purposely rested its decision on a federal ground" because, had it proceeded on a state ground, it would have barred the state agencies from all such dealings, rather than barring, as it did, only specified illegal terms or conditions.

The conclusion thus sought to be drawn is not justified. A decision that state irrigation districts might not lawfully contract with the Government on *any* terms would have been consistent with a holding that the federal reclamation program was unconstitutional. On the other hand, the decision which the court in fact reached—that districts could lawfully contract, barring only certain unauthorized terms and conditions—is plainly consistent with its reliance upon state law. We submit that the Government's brief, although starting from the right premise—that the court below did not bar

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2. Thus, the Supreme Court of California rejected appellees' contentions as to the invalidity of certain provisions of the contracts (AJS 62); the contracts were held invalid as a whole on the familiar and proper principle that this result follows if a contract is invalid "on one material ground" (AJS 11). The substance of this footnote was called to the Court's attention in appellees' main brief, pp. 31, 32.

lawful contracts—, has reached exactly the wrong conclusion.

Moreover, a few pages later in the Government's brief the sentence appears (p. 35):

> "The California court has now determined that the 160-acre limitation and the repayment provisions of the contracts are *inconsistent with state law* requiring the proportionate distribution of water for irrigation (Cal. Water Code, Sec. 22250) and the right of landowners to receive irrigation water." (Emphasis ours.)

This, of course, is precisely the position that we have urged before the Court since the filing, last June, of our motion to dismiss.

What the Government's position comes down to, on our analysis, is this: Even though the Supreme Court of California, in holding the contracts invalid, *thought it was doing so on the basis of state law and said so in its opinions*, federal law is necessarily involved since it controls and, by its force, the contracts must be held valid. If the position of the Government or appellants now comes down to this, as we think it must, both have uselessly employed a good many words in attempting to construe the opinions below into saying what they do not say. On this basis, appellants and the United States in seeking review by this Court gain no help from the opinions of the court below but must rest their arguments for jurisdiction on the same argument both are ultimately driven to on the merits—namely, that federal law overrides state law to validate the contracts.

In short, on the jurisdictional question it seems to us that both appellants and the United States are driven to this position: Whatever the court below thought or said, federal law requires validation. Inquiries by the state courts as to the contractual capacity of state irrigation districts under state law, the state law of waters, etc., are futile because the result of validation follows, whatever the answers to these

questions. The congressional requirement for validation of such contracts leaves no judicial inquiry open to the state courts. Contract, validation, local irrigation districts—all are simply mechanisms to effectuate an exercise of federal power.

Under this Point I, comment is also in order as to certain statements made in an effort to establish the interest of the United States in these cases and the substantial identity of its views with those of the executive and legislative branches of the California government. (Br., pp. 28-31.)

In the latter connection, the Government makes the following assertion:

> "As emphasized by the brief for the appellants (Br. p. 20), there is no clash here between the United States on the one hand and the legislative and executive branches of the State of California on the other. The impasse and the present situation are the result of the action of the California courts, at the instance of minority parties, in refusing to confirm the execution of the contracts between the United States and the irrigation districts." (Br., p. 28; footnote omitted.)

This statement is not supported by reference to any facts and is erroneous. The Ivanhoe and Madera contracts were specifically the subject of a comprehensive investigation by the Joint Committee on Water Problems of the Legislature of the State of California. As a result of the recommendations of this Committee, the Legislature of the State of California adopted two resolutions,[3] memorializing the

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3. Senate Concurrent Resolution No. 8 (Stat. 1953, Ch. 4, p. 272), introduced by Chairman J. Howard Williams at the 1952 Regular Session, adopted by a vote of 22 to 0 in the Senate and 61 to 0 in the Assembly, and an identical Assembly Concurrent Resolution No. 2 (Stat. 1953, Ch. 4, p. 405), introduced by Vice-Chairman Cloyed at the 1952 First Extraordinary Session, adopted by a vote of 56 to 0 in the Assembly and 27 to 0 in the Senate. These resolutions are referred to in our main brief, p. 38, fn. 9.

Director of Public Works and the State Engineer, as follows:

"1. That, in issuing permits and licenses to appropriate water for federal reclamation projects, due consideration be given to the possibility and desirability of issuing such permits and licenses to appropriate water for irrigation purposes to the contracting public agencies of the State rather than the United States.

"2. That licenses issued to the United States for irrigation purposes in connection with federal reclamation projects be limited to water subject to contracts between public agencies of the State and the United States which the State Engineer finds to be in the public interest and to conform to state law and that any permits and licenses issued for such purposes contain, in the public interest, the following conditions among, but not to the exclusion of, other conditions:

"(a) That the beneficiaries of each permit and each license are and shall be the public agency or agencies of the State together with the owners of land within such agency or agencies to be served with the water appropriated under the permit and license.

"(b) That the rights of the agencies and owners of land within the agencies to be served with the water appropriated under the permits and licenses are, subject to continued beneficial uses, permanent and appurtenant to the lands upon which the water is used.

"(c) That the use of water appropriated under the permits and licenses are subject to the reasonable requirements of the watershed or area wherein the water originates or area immediately adjacent thereto that can be conveniently supplied with water therefrom; and that no transfer of water of one watershed or area of origin to another watershed or area shall be consummated unless and until provision is made to meet such reasonable water requirements of the former; * * *"

The California Legislature continued to take an active interest in the progress of the *Ivanhoe* and *Madera* cases, and, in May of 1953, Senate Joint Resolution No. 35 (Stat. 1953, Ch. 159, p. 4170) was adopted, calling upon the Federal and state agencies involved to renegotiate the water delivery contracts in the Central Valley Project on the basis of eliminating therefrom all features held invalid by the trial court in the *Ivanhoe* case.

Shortly thereafter the California Legislature again acted to protect the integrity of state law, by adopting Senate Concurrent Resolution No. 80 (Stat. 1953, Ch. 196, p. 4235), calling upon the Water Project Authority and the State Engineer to appear in the appellate courts in order to present their views, which were inconsistent with those of the Attorney General of the State of California.

Again, in 1955, the California Legislature, pursuant to an amendment to the State Constitution (Article XIV, Section 4) adopted in 1954, amended Section 126 of the State Government Code, granting consent to the acquisition of lands within the State of California by the Federal Government. The effect was to condition such consent (among other conditions and reservations) as follows:

> "In granting this consent, the Legislature and the State reserve jurisdiction over the land, water and the use of water with full power to control and regulate the acquisition, use, control and distribution of water with respect to the land acquired." (Government Code, Section 126 (h).)

In addition, although the California Legislature has met many times since the decisions of the trial courts in the *Ivanhoe* and *Madera* cases were handed down, it has not attempted to enact legislation which would in any way contravene the state's rights as set forth in the decisions appealed from.

The Government's brief refers to the size of the Central Valley Project and to the large sums involved, characterizes the decisions of the Supreme Court of California as creating an "impasse" and a "serious interference" with the operation of the project, and states that as a result the federal reclamation program in general is "seriously prejudiced." (Br., pp. 28-29.) If all this were true, it would not in itself, of course, present a reason for review by this Court unless the requirements of appellate jurisdiction were satisfied.

We submit, however, that the Government's statements as to "impasse", "serious interference" and the like are not descriptive of a factual situation, but are merely a recast of its legal argument. That is, if we are correct in our view that the Bureau of Reclamation is bound to follow the congressional mandate expressed in Section 8 of the Reclamation Act of 1902, no such horrendous situation exists, and the Bureau will simply now proceed to conform its contracts to state law. Similarly, if Congress meant what it said when it required the Bureau to proceed solely by contracts with state-created agencies, and provided that such contracts be confirmed by state judicial proceedings before they became binding, there is no basis for alarm. If appellees are right, the decisions below have created no impasse, interference or prejudice with respect to federal reclamation or federal-state cooperation in this field; rather, these decisions have rid the atmosphere of mistaken concepts of federal power and reaffirmed, in accord with the congressional plan, the integrity of state water law.

Finally, it should be noted that the United States protects itself by a *caveat* of lack of jurisdiction, contending that in any event it cannot be bound by the decisions in the instant cases since it was not and is not a party. (U.S. Br., pp. 29-31.) We do not see that the Government's discussion of this subject contributes anything constructive to the present

cases. If the Government is not bound by the judgments herein, that would be an additional reason for denial of review; it throws no light on whether the decisions below should be affirmed or reversed. Whether or not the United States is bound as a party, it is perfectly clear that the judgments will effectively operate to validate or invalidate purported contracts to which it is a party, Congress obviously having intended that the validity of such contracts be so determined by precisely this type of proceeding. And a reaffirmation by this Court of the force of Section 8 of the Reclamation Act of 1902 may be expected to have its appropriate impact on the executive agencies of the Federal Government, whether by way of *res judicata* or *stare decisis*.

II. Federal Law Leaves to State Jurisdiction the Capacity of Irrigation Districts to Contract and the Control, Appropriation, Use and Distribution of Water for Irrigation Purposes.

This point is dealt with in appellees' main brief at pages 47-63. We there analyze the federal statutes involved and show that Congress has deliberately elected to proceed solely by way of contract, with such state-created agencies as may be authorized to enter into the prescribed contracts under state law, and has deliberately elected to leave the control, appropriation, distribution and use of waters for irrigation purposes within state jurisdiction. In this connection, we have also pointed out that the Bureau of Reclamation has reported to Congress that it is proceeding under state water law, and we show that in California the Bureau presently is processing applications for the appropriation of state waters before the State Water Rights Board, under California law. Further, we show that the repeated decisions of this Court confirm that it is the congressional policy to leave such irrigation matters within state jurisdiction. Finally, we show that appellant's con-

tentions, if adopted, would emasculate Section 8 of the Reclamation Act.

The Government's argument with respect to our Point II is set forth in its brief, at pages 34-48, under a topic heading which asserts only that Congress "Has Authorized" the inclusion of the 160-acre limitation and other provisions in contracts to be entered into by the Bureau of Reclamation and state irrigation districts. With this heading, standing by itself, appellees would not necessarily disagree (apart from the constitutional questions discussed in our main brief, Point IV); that is, it may be assumed that Congress has so authorized the inclusion of the 160-acre limitation *where permitted by state law*. As a reference to its brief will show, the Government's argument, however, goes considerably beyond its heading. What it is really arguing is that Congress has not merely authorized but *required* the inclusion of the 160-acre limitation and the denial of a permanent water right *regardless of state law*.

Acknowledging the existence of Section 8 of the Reclamation Act of 1902, which explicitly adjures respect for state water law, the Government nevertheless argues that this section is qualified or superseded by Section 5 of the same Act and by later statutes, including Section 46 of the Omnibus Adjustment Act of 1926. Hence, the Government invokes authority for the proposition that the specific (allegedly, Section 5) controls the general (allegedly, Section 8), and that later enactments prevail over earlier. (U.S. Br., p. 38.)

Although we believe that the Government's position has been answered in our main brief, a further specific application of what we believe to be correct principles to the Government's argument would seem to be in order. What follows supplements our main brief at pages 60-63.

(1.) In the first place, it will be seen that the Government's argument gives little if any, force or effect to Section 8 of the 1902 Act, since it would impose the 160-acre limitation and deny a permanent water right, notwithstanding the explicit requirements of this time-honored section. In our view, on the other hand, specified contractual provisions, including Section 5, may readily be reconciled with Section 8 when it is understood that they may apply to the extent consistent with state law. All provisions are thus subjected to a mutual accommodation and given due effect.

That such a reconciliation produces substantial and constructive results is shown by a reference to the instant contracts. Although they were held invalid by the court below, this result was reached due to relatively few errors of inclusion and exclusion. Most of the provisions of the contracts prescribed by federal law the court below found unobjectionable.

The applicable cases, rather than those cited by the Government, are therefore those holding that wherever reasonably possible all provisions of a statute must be given effect, and none may be deemed surplusage. Cases applying this rule are *United States v. Menasche*, 348 U.S. 528; *Markham v. Cabell*, 326 U.S. 404, 409; *McDonald v. Thompson*, 305 U.S. 263, 266. See 2 Sutherland, *Statutory Construction*, 3d ed., Section 4705. As the *Menasche* case put it (348 U.S. at pp. 538-539):

> "* * * 'The cardinal principle of statutory construction is to save and not to destroy.' *Labor Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 30. It is our duty 'to give effect, if possible, to every clause and word of a statute,' *Montclair v. Ramsdell*, 107 U.S. 147, 152 * * *"

(2.) The Government's argument ignores the fact that Section 8 of the Reclamation Act of 1902 has been re-enacted and reaffirmed by the Congress as late as 1956.

Act of July 2, 1956, Section 4, 70 Stat. 483, 43 U.S.C. 485h-4. Similarly, the Government in this connection is silent as to the policy of respect for state water law unmistakably expressed in the Act of July 10, 1952, Section 208(a), 66 Stat. 549, 43 U.S.C. 666(a). In the light of these statutes, it would seem that the Government's reliance upon Section 46 of the Omnibus Adjustment Act of 1926 as "the later enactment by 24 years" (Br., p. 38) is wholly misplaced.

(3.) Similarly, the Government gives no weight to the actual practice of the Bureau, as reported to the Congress, in respecting state water law and seeking appropriations from state authorities under such law. (Appellees' main brief, pp. 51-52.) From the Government's argument on this point, one would have no inkling that this has been the consistent practice of the Bureau or, much less, that at the very moment of the filing of this brief the Bureau has pending applications for the issuance of appropriation permits under California law before the California State Water Rights Board, sitting at Fresno. (Appellees' main brief, p. 52.) Nor does the Government express its views as to the conditions heretofore imposed by the California State Engineer and State Water Rights Board in issuing appropriation permits on applications filed by the Bureau of Reclamation. (Appellees' main brief, pp. 19-21.) Those conditions are utterly inconsistent with any right in the United States to control and distribute waters obtained under such permits in a manner contrary to state law.

Is it the position of the United States that, pursuant to Section 8, the Federal Government in appropriating water must proceed in accordance with state law, but that, having so appropriated, it may handle and deliver the water in disregard of state law and pursuant to the Government's claimed interpretation of Section 5? If this is its position,

a most curious result would follow, and one which Congress certainly never intended. Under this view, the United States would receive rights to water only as permitted under state law, but, having received the water, could disavow state restrictions implicit or explicit in the grant and enjoy a greater title than it received. But if the Federal Government must be invested with a magical power to give a greater title than it receives, why bother to appropriate under state law in the first place? No such purpose can be fairly attributed to Congress.

(4.) The Government ignores the decisions of this Court cited in our main brief to the effect that Section 8 prevails in the field of irrigation. In fact, of the cases cited in our brief (pp. 53-60) only two or three are even mentioned by the Government, and none for their holdings as to the force of Section 8. Yet it seems evident that the Government's attempt to neutralize Section 8 cannot succeed unless these cases are overruled.

(5.) Finally, the Government's effort regarding Section 8 is in the face of the congressional decision to proceed solely by means of contract, with state-created agencies and to require the validation of such contracts in the state courts. This requirement, as specifically set out in Section 46 of the Omnibus Adjustment Act of 1926, could not express more clearly a congressional purpose to leave the capacity of one party to the contract, namely the state-created agency, entirely up to the law of the state. Thus, if, contrary to what we believe to be the fact, Section 8 should be held to be qualified or superseded, it still would not follow that the instant contracts are valid. That remains a question for the state courts to answer.

Apparently aware of this gap in its logic, the Government's Point IV contains the queer heading (p. 49):

"The Federal Government has Constitutional Power to Impose the Disputed Contractual Requirements"

The strange doctrine that contractual requirements may be imposed we deal with under our next point. At present it suffices to say that, whatever the constitutional power in this regard, the Government's brief makes no effort to show that Congress has attempted to create irrigation districts, or invest them with contractual power, or has done other than to leave these matters within state jurisdiction.

For these reasons, we submit that the Government does not establish its case by dwelling upon the size of the project, and the amounts of the appropriations authorized by Congress. It has failed to face up to the intent of Congress, the practice of the Bureau itself respecting state law, and the numerous decisions of this Court insisting upon the force of Section 8 of the Reclamation Act of 1902.

III. The Available Federal Constitutional Powers Are Ineffective to Require Validation of the Contracts by Force of Federal Law.

It is not anticipated that the Court will need to deal with any question of constitutional power. This is due to the plain congressional mandate, discussed under Point II, to proceed solely by way of contract with such state agencies as under state law have the requisite authority, and to leave the control of water for irrigation purposes to state jurisdiction. We reach this point in the argument only on the assumption (contrary, as we maintain, to the facts) that Congress has used the device of a contract, not in the usual sense to denote a consensual undertaking, but merely as a means to impose various terms and conditions by sheer force of federal power.

The Government's brief evidently contends that Congress has so attempted to use its contracting power as a means

of exercising its regulatory authority. Hence, the Government argues that it has "Constitutional Power to Impose the Disputed Contractual Requirements" (Br., p. 49). Again, for the reasons developed under Point II, we submit that Congress has not sought to interfere with state jurisdiction in irrigation matters and that any claim that Congress has done so is specious. We further take issue, however, on the ground that, even had Congress attempted to assume jurisdiction over state irrigation districts and waters, it could not have done so under the only powers available to it.

Our position in this matter is developed in appellees' main brief at pages 63-76. We there point out that the congressional power to legislate in connection with the Central Valley Project and the Cachuma unit is under the welfare clause of the Federal Constitution (and possibly the property acquiring and disposing power); that the power of Congress to act under the welfare clause and the property disposing power is a limited one, as established by the prior decisions of this Court; and that under these powers the Congress may not override state law.

The Government's brief discusses this matter at scattered places under its Point IV, which has the heading above referred to regarding constitutional power "to impose" contractual requirements. The Government's first point is that the two irrigation projects here involved are based upon the Federal Government's constitutional power under the general welfare clause, and under the property clause (U.S. Br., pp. 49-50). This entirely accords with our own analysis (appellees' brief, pp. 63-66) except that reference to the property power in this connection should be noted with some caution. That is, we are not here dealing with the public domain, but with water rights or other property which the

Federal Government has acquired or is in the process of acquiring for the effectuation of these particular irrigation projects.[4]

Secondly, the Government argues that it may impose reasonable conditions on the receipt of federal monies and the use of federal property (Br., pp. 50-53). From this, the brief concludes that Congress has constitutional authority "to impose" the contractual requirements in question.

(1.) The vice of the Government's argument rests, first of all, in its failure to face up to the fact that what is here involved is not merely conditions, reasonable or otherwise, but conditions which attempt *to override state law*. Cases cited for the proposition that the Government may impose reasonable conditions on the receipt of federal monies and the use of federal property (U.S. Br., pp. 51-52) are hence pertinent only where they involve the overriding of state jurisdiction.[5]

(2.) But such cases must also be subjected to a further test, which is this: What is the constitutional source of authority for the overriding of state law? Is the authority asserted one of the regulatory and coercive powers of the Federal Government, such as the power to regulate commerce, to coin money and prevent others from doing so, to establish post offices, to raise and support armies, and the like, or, to the contrary, is the power involved merely that of spending for the general welfare and of making rules and regulations concerning the disposition of Government property? The Government's brief assumes, *without discussing or in terms even recognizing the problem*, that the federal

4. We discuss the general subject of the United States' rights with respect to California waters under Point IV, *infra*.

5. None of the cases cited at pages 51-52 of the Government's brief involved the disposition of federal monies or property on terms or conditions inconsistent with state law.

authority to impose terms and conditions, even though in conflict with state law, is as broad under the general welfare clause as under the power to regulate commerce, etc. This cannot be so.

As we have pointed out in our main brief (pp. 67-69), unless a distinction is drawn between the general welfare (and property acquiring and disposing) powers, on the one hand, and the regulatory and coercive powers on the other hand, it is idle any longer to speak of a Government of limited powers. For if no such distinction existed, the Federal Government by the simple process of spending, purchasing or condemning, and then disposing of, on any terms which might be justified as contributing to the general welfare, could override state law in any field in which the Federal Government pleases. This, we submit, would be the inevitable effect if no distinction is drawn among the various federal powers.

Consistent with its failure to discuss or even recognize what we submit to be the true problem, the Government's brief cites only two cases which appear to involve the imposition of terms and conditions contrary to state law. (And neither is cited for this point.) These are *Public Utilities Commission of the State of California v. United States*, No. 23, this Term, decided March 3, 1958; and *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187. (U.S. Br., p. 53.) These cases in fact point up the distinction we have made, since both rest on an exercise by the Federal Government, not of its general welfare or property powers, but of its power to maintain the military establishment for the defense of the country.

Similarly, the Government's brief gives no heed to the cases cited in our main brief (pp. 67-74) for the proposition that the power of Congress to act under the welfare clause (as well as the property clause) is limited. Cases which

squarely make this distinction are *United States v. Butler*, 297 U.S. 1; *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288; and *Hopkins Savings Assn. v. Cleary*, 296 U.S. 315. Other cases applying the same or analogous principles are *Oklahoma v. Civil Service Comm'n.*, 330 U.S. 127; *Steward Machine Co. v. Davis*, 301 U.S. 548; *United States v. San Francisco*, 310 U.S. 16; *United States v. Bekins*, 304 U.S. 27; and *United States v. Burnison*, 339 U.S. 87.[6]

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6. Of these, the *Oklahoma*, *Steward Machine Co.*, *Bekins*, and *San Francisco* cases are cited by the Government, but only for the broad proposition that it may impose reasonable conditions on the receipt of federal monies and the use of federal property. (U.S. Br., pp. 51-52.) The Government reads these cases evidently as permitting the imposition of such conditions even where they override state law. In fact, none involved any conflict whatsoever with state law. We point out that the cases referred to do not impose conditions overriding state law but conditions accepted by the states. (Appellees' main brief, pp. 72-73.)

Also, in our main brief we pointed out that the condemnation case of *United States v. Carmack*, 329 U.S. 230 (U.S. Br., p. 56) is not in point because it involved an exercise not of the general welfare or property power but of the authority to maintain post offices and customs houses. (Appellees' main brief, p. 68, fn. 18.) Likewise, *Kohl v. United States*, 91 U.S. 367 (U.S. Br., p. 56), involved condemnation of land for a courthouse, custom house, etc. Nothing in Mr. Justice Strong's cautiously-constructed opinion in *Kohl* throws doubt on our analysis of the federal power under the general welfare clause.

Finally, we have heretofore pointed out the application and force of *United States v. Burnison*, 339 U.S. 87. (Appellees' main brief, pp. 73-74.) The Government's only answer to this is (Br., p. 66, fn. 25):

> "Since the court below recognized the power of the United States to acquire the water rights necessary to execute the project, cases such as *United States v. Burnison*, 339 U.S. 87, are irrelevant here."

We, of course, deny the authority of the United States, on both statutory and constitutional grounds, to acquire the "unlimited title" "necessary to execute the project." (Appellees' main brief, pp. 61-62, 67-68.) We know of no recognition by the Supreme Court of California of any such power.

We return, then, to the discussion of constitutional authority developed under Point III of our main brief. Assuming, for the sake of argument, that Congress had sought, by "imposing" contractual terms and otherwise, to override state law, it could not do so pursuant to the powers available to it under the Federal Constitution. This is so because the powers at the disposal of Congress are limited to spending for the general welfare and acquiring and disposing of property. These powers are indequate, in the words of the *Butler* and *Ashwander* cases, "to coerce action left to state control" (297 U.S. at p. 87) or "to govern the concerns reserved to the States" (297 U.S. at p. 338).

Finally, the last two pages of the Government's brief seek to inject into the litigation an alternate basis for the exertion of federal authority, and one neither raised by any party nor passed upon in the courts below. This is the proposition (U.S. Br., pp. 67-69) that California waters were originally vested in the United States along with the rest of the public domain, except in so far as express grants had been made by Spain or Mexico, and that the title to the unappropriated waters of California is, as a matter of federal law, not vested in the State of California. Hence, the argument runs that California, whether under a trust theory or otherwise, cannot legislate with respect to California waters as against the United States, and that the contracts must therefore be validated.

This, we apprehend, comes close to an assertion of "paramount rights". We respectfully submit that it was this doctrine, clothed in somewhat different language, which the Court rejected many years ago in *Kansas v. Colorado*, 206 U.S. 46 (discussed in our main brief at pp. 64-66). It is a doctrine utterly inconsistent with the entire line of cases decided by this Court and discussed at pages 53-60 of our

main brief. However, the Government having elected to assert this proposition, we answer it in some detail in our succeeding Point IV.

IV. The Government's Assertions of Power Over California Water Are Untenable.

As we have mentioned, the Government's brief (pp. 67-69) advances the curious theory that the United States owns, or at least has the right to control, all unappropriated water in California. It is not clear whether this argument proceeds on the theory that the United States is sovereign over such water, as if it constituted a federal enclave, or whether the control of the United States over such water is thought to derive from its present or past ownership of public riparian lands. Neither view is tenable, as we shall show below.

It seems appropriate to observe, however, before going into these questions, that we fail to see why the issue is injected into these cases, apparently as an afterthought, with the suggestion that the present cases are not appropriate to resolve it. The Government specifically states that "It is unnecessary here to determine who has the title to unappropriated water." (Br. p. 68.) In any event, control, rather than title, would be the critical element; the same result reached by the trust theory follows from the state's authority to control.

Moreover, the issue is particularly irrelevant to these cases, since there is no showing that any "unappropriated" water is involved.[7] Necessarily, if all water involved in

7. The term "unappropriated," as used by the Government, we necessarily assume, excludes water with respect to which appropriative applications have been filed, pursuant to Section 1252 of the California Water Code, even though such applications have not pro-

these cases has been appropriated or is in the process of being appropriated, the issue is wholly foreign to these cases.

If the issue tendered by the Government must be met, it is well to pause at the outset and consider the consequences which would flow from the adoption by this Court of the Government's position. The contention that the United States owns all waters within the State of California, or by virtue of its sovereign capacity can control the use of such water, is indeed startling.[8] If one were to pick the single natural resource that has been most necessary for the growth and development of every state in the Union, that resource would of necessity be water. Even before the inception of our Nation, settlements were founded and towns and cities developed only where water was available for the inhabitants. The great metropolitan centers of our Nation's West have expended millions of dollars to provide an adequate water supply for the domestic use of their inhabitants and for the commercial use of their industries. In the western states, where irrigation is necessary for agricultural crops, private individuals, water companies, irrigation districts and the states themselves have expended millions of dollars for the development of the water supply, without which crops could not be grown.

One of the basic assumptions under which private individuals have invested the tremendous sums required to

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gressed to the point where licenses have been issued, pursuant to Section 1610 of the Water Code.

As we have pointed out in our main brief (p. 52) and at pp. 11 and 13, *supra*, the Government itself, through the Bureau of Reclamation, is actively pursuing such applications before the State Water Rights Board at the present writing. The futility of such proceedings, if the instant theory were correct, will be readily apparent. See *supra*, pp. 13-14.

8. The same proposition would seem to be applicable throughout the western states.

procure these urban and rural supplies of water was the assurance that, after the systems were constructed and the water put to use, the user acquired a valid and stable right under law to the continued use of the water supply. Thus the establishment of rights in the use of water under our laws has become and remains just as important as the establishment of valid titles to our lands.

Throughout the history of our Nation, our people have looked to the states and to state laws to determine the rights in the use of waters that are intrastate in character. The whole stability of our economy, domestic, industrial and agricultural, has its foundation on water rights acquired under state law.

If we were to adopt the theory that the United States holds the basic title to waters of the western states, then those who developed water and placed it to use under the assumption that state law prevailed were and are but trespassers against the rights of the United States. The titles which the users of water gained under state law would all be subject to extinguishment by the United States' reassertion of its purported right to the water, and the millions of dollars expended to acquire, develop and preserve the water supplies for our cities, factories and agricultural lands would have gone for naught. If this be the case, then that certainty which is required by the men who are the developers of our Nation and that stability of ownership which is a basic prerequisite for the investments of man's money or effort will no longer exist.

In any event, the issue tendered by the Government has long ago been resolved by this Court.

A. The United States Is Not Sovereign Over the Internal Waters of Any State.

A long line of cases, from *Pollard's Lessee v. Hagan*, 3 How. 212, through *United States v. California*, 332 U.S. 19,

holds that the states have full sovereign power over all waters within their boundaries, subject only to the navigational servitude and the right of the United States to such water as it may put to beneficial use on its own riparian lands. *United States v. Rio Grande Irrigation Co.*, 174 U.S. 690, 702-03; *Port of Seattle v. Oregon & W. R.R.*, 255 U.S. 56, 63; *Fox River Co. v. Railroad Commission*, 274 U.S. 651, 655. This sovereign power was derived by the thirteen original states from the British Crown; they did not delegate it to the Federal Government, except to the extent just indicated;[9] and the other states, including California, were subsequently admitted on an "equal footing" with the thirteen original states.[10] *United States v. California*, *supra*; *Cardwell v. American River Bridge Company*, 113 U.S. 205. It does not result from the Desert Land Act, of 1877, 19 Stat. 377, as amended, 43 U.S.C. 321, as the Government seems to suggest.

Such state sovereignty over internal waters necessarily implies the power to regulate the manner in which title to such waters may be acquired and the uses to which they may be put. This has been the uniform view taken by this Court. See, *e.g.*, *California Oregon Power Co. v. Beaver Cement Co.*, 295 U.S. 142; *Federal Power Commission v. Niagara Mohawk Power Corp.*, 347 U.S. 239, 252.

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9. Thus, the navigational servitude results from the power over interstate commerce delegated to the Federal Government by Article I, Section 8, Clause 3 of the Constitution. We must also bear in mind the repeated holdings of this Court that sovereignty over property within a state can be acquired by the Federal Government only by that state's consent or cession. *Mason Co. v. Tax Comm'n.*, 302 U.S. 186, 197; *Wilson v. Cook*, 327 U.S. 474, 488; *Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525, 539.

10. In the case of California, the relevant statute affording "equal footing" is the Act of September 9, 1850, Section 3, 9 Stat. 452.

The cases cited by the Government (Br., p. 68) certainly do not hold to the contrary. *Federal Power Comm'n v. Oregon*, 349 U.S. 435, involved the use to be made of Government land. The Court's holding in that case was predicated upon an express representation that the project there involved would be carried out subject to "all existing rights to the use of the waters of the river, whether perfected or not." 349 U.S. at p. 441. In *Winters v. United States*, 207 U.S. 564, the Court did not reach the question of the sovereignty of any state. The decision turned upon construction of an agreement between the United States and certain Indians. *United States v. Walker River Irr. Dist.*, 104 F.2d 334 (9th Cir.), involved only the question of water rights reserved by the United States upon setting aside an Indian reservation. The court expressly recognized the sovereignty of the state over water rights and treated the United States no differently than a private owner of land. *United States v. Ahtanum Irrigation District*, 236 F.2d 321 (9th Cir.), certiorari denied, 352 U.S. 988, was to the same effect.

Finally, *United States v. Rio Grande Irrigation Company, supra*, also cited by the Government, expressly supports the sovereign rights of the states over their internal waters, as we have indicated above. The holding of the Court was there based upon a determination that the construction of a dam across the Rio Grande River would impair the navigability of the river; the decision rests on the overriding power of the United States with respect to navigation.

Congress has proceeded in all matters affecting internal waters of the states in full recognition of the principles expressed above. On at least nine occasions since 1866 it has admonished officials of the Government to respect water

rights acquired under state law.[11] The Act of July 10, 1952 is particularly significant. It provides, even where the United States has acquired title and is the owner of water rights, that the United States shall

> "be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty."

Another important consideration is the fact that Congress has never attempted to exert sovereign power over water by prescribing any overriding code of regulations for the appropriation and use of water. Indeed, in *Kansas v. Colorado*, 206 U.S. 46, *supra*, this Court held that Congress has no such power.

It seems apparent, therefore, that the rights of the United States with respect to California waters can rise no higher than the rights of an owner or former owner of riparian land. The Supreme Court of California summarized the situation succinctly in *Palmer Etc. v. Railroad Commission*, 167 Cal. 163, 168:

> "The United States, with respect to the lands which it owns in this state, is a riparian proprietor as to the streams running through such lands. It is only by virtue of that fact that it has any right or power of disposition over the waters thereof. And its right and power in that respect is no greater and no less than that of any other riparian proprietor."

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11. Act of July 26, 1866, Section 9, 14 Stat. 251, Rev. Stat. 2339, now 30 U.S.C. 51 and a part of 43 U.S.C. 661; Act of July 9, 1870, Section 17, 16 Stat. 217, Rev. Stat. 2340, 43 U.S.C. 661; Desert Land Act, of 1877, 19 Stat. 377, as amended, 43 U.S.C. 321; Reclamation Act of 1902, Section 8, 32 Stat. 388, 43 U.S.C. 372, 383; Federal Power Act, Sections 9(b), 27, 41 Stat. 1063, 16 U.S.C. 802(b), 821; Boulder Canyon Project Act, Section 18, 45 Stat. 1063, 43 U.S.C. 617q; Taylor Grazing Act, Section 3, 48 Stat. 1269, as amended, 43 U.S.C. 315b; Act of July 10, 1952, Section 208(a), 66 Stat. 549, 43 U.S.C. 666(a); Act of July 2, 1956, Section 4, 70 Stat. 483, 43 U.S.C. 485h-4.

We therefore analyze the rights of such an owner under California law.

B. The Rights of the United States as Landowner, Under State Law, Are Wholly Inadequate to Support the Powers Asserted.

As we have shown, upon the admission of California to the Union, the United States, as owner of the public domain, held such water rights as were held by other riparian landowners in the state.

As a riparian landowner under the laws of California, the United States had and has only the following rights, in common with other such owners:

(1.) A riparian landowner, at least since the adoption in 1928 of Article XIV, Section 3 of the State Constitution, has the right only to such water as he can put to beneficial use on the riparian land itself. Riparian rights cannot be transferred unless the land itself is transferred. A purported conveyance of water rights by riparian landowners, apart from the land, merely frees the water for use by appropriators and other riparians. *Duckworth v. Watsonville Etc. Co.*, 150 Cal. 520, 526.

(2.) An appropriator may obtain a right to use water only by complying with the provisions in that respect set forth in the California Water Code (Division 2, Part 2, Chapter 2), including, since 1913, the filing of an application with and the obtaining of a permit from the State Water Rights Board or its predecessor. Such a permit is granted upon such conditions as the public interest may require (Water Code, Section 1253).

This, then, is the full extent of the rights of the United States with respect to California water, and it is by such rights that the Government attempts to justify an elaborate structure of federally imposed conditions, contrary in some

respects to state law as determined by the court below. These rights obviously will not suffice for the purposes asserted.

The Desert Land Act, of 1877, as well as earlier Acts,[12] were intended, as this Court has said, to effect a severance of land title from water title, under the circumstances therein provided. See *California Oregon Power Co. v. Beaver Cement Co.*, 295 U.S. 142, *supra*.

Water was thereby made available for appropriation free of the riparian rights of the United States and its patentees. In 1927, the California State Director of Finance filed applications, pursuant to state law, to appropriate water for the Central Valley Project. (See our main brief, p. 16.) As the Court below put it, the purpose of the enabling legislation was to

> "provide for the appropriation * * * of all of the unappropriated waters of the various streams of the state which might be needed for the coordinated plan of conservation in the central valleys". (AJS 13-14.)

As a result of the Desert Land Act and these filings, it is highly doubtful that the United States has any riparian rights with respect to the waters here involved. Its only rights would seem to be derived from the subsequent assignment of these applications to the United States, applications filed by the United States itself (see our main brief, pp. 19-20) and rights acquired by purchase or condemnation, which are discussed below. The Secretary of the Interior has so stated (R. 100).

Even to the extent that it retains riparian rights, they are of no avail in this case, for state law limits riparian rights to riparian land, and there is no contention that the

12. The Acts of 1866 and 1870, *supra*, p. 26, fn. 11.

United States intends to use any of the water here involved upon riparian lands owned by it.[13]

C. Rights Acquired by Purchase or Condemnation Are Likewise Inadequate.

In an attempt to bolster its position, the Government relies upon rights acquired from private individuals or corporations by purchase or eminent domain. Particular reference is made to acquisitions from Miller and Lux, Inc. (U. S. Br., pp. 66-67.) There are several answers to the claims based upon these acquisitions.

(1.) In the first place, the acquisitions from Miller and Lux and others were made pursuant to congressional authority for the purpose of carrying out the Central Valley Project, within the limits of the general welfare power, and not otherwise. As we have pointed out in our main brief (pp. 67-68), and in Point III, above, the United States is not constitutionally competent to use its powers under that clause so as to contravene state law.

(2.) Insofar as riparian rights of Miller and Lux and others are involved, such rights could not, under state law, be transferred as such to the United States. The most that the United States obtained was an extinguishment of those riparian rights, which freed the waters involved for appropriation by the United States. See p. 27, *supra*. Such appropriative filings remain subject to the terms and conditions to be imposed by the State Water Rights Board in the exercise of its powers under state law.

---

13. The Government makes the cryptic assertion (Br., p. 68, fn. 30) that some of the water involved is derived from federal land. We are aware of no rule of law which would make this asserted fact relevant. The foregoing analysis makes it clear that even a reservation of federal lands would only preserve riparian rights in the United States and not create a sovereign control over the waters arising on such lands.

(3.) Moreover, all water rights acquired from Miller and Lux under the so-called "exchange contract" are dependent upon delivery to Miller and Lux of a substitute supply from the Sacramento River system, (Plaintiff's Exh. B-1, para. 7, *Ivanhoe*, Rep. Tr. 48, April 3, 1951.) Such a substitute supply can likewise be obtained only under a permit issued by the State Water Rights Board. In carrying out the Miller and Lux contract, and in full recognition of the powers of the State Water Rights Board, the Bureau of Reclamation has in fact filed applications to appropriate water of the Sacramento River system to supply the substitute requirement and has received a permit to impound and divert water at Folsom and Nimbus Reservoirs for delivery in partial fulfillment of the contract. (See appellees' main brief, pp. 20-21.) The use of such waters by the United States is and will be subject to the conditions imposed in permits issued or to be issued by the Board.

The preceding discussion leads us again, by a different route, to the conclusion that state law is fully dispositive of all the issues in this case. The United States has no sovereign rights over inland waters of California, as repeatedly held by this Court, neither the navigational servitude nor any other regulatory power being here involved. Its rights as a landowner are irrelevant, since there is nothing in the record indicating that it owns any riparian rights involved in these cases. Its appropriative rights, whether derived by assignment from the State of California or by purchase or condemnation of private rights, are, and must be, wholly subservient to state law. The inevitable result, we submit, is that state law governs all these issues, as the Supreme Court of California held.

CONCLUSION

Other points urged in the Government's brief would not seem to require further discussion. Its brief presents no impelling reason for the Court to review the instant cases, or if jurisdiction is exercised, to do other than affirm the decisions below.

Respectfully submitted,

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April, 1958

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FILED
JUN 10 1957
JOHN T. FEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. ~~993~~ 122

THE IVANHOE IRRIGATION DISTRICT,
Plaintiff,

vs.

ALL PARTIES AND PERSONS, etc.,
Defendants,

THE STATE OF CALIFORNIA,
Defendant and Appellant,

COURTNEY McCRACKEN,
Defendant and Appellee.

Request for Leave to File as Amicus Curiae Memorandum Supporting Motion to Dismiss Appeal

and

Memorandum Supporting Motion to Dismiss Appeal

On Appeal from the Supreme Court of the State of California

EDSON ABEL
Middletown, California
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SUBJECT INDEX

	Page
Request for Leave to File as Amicus Curiae Memorandum Supporting Motion to Dismiss Appeal	1
Consent to Filing of an Amicus Curiae Brief in Opposition to Jurisdictional Statement on Appeal	3
Consent to Filing of an Amicus Curiae Brief in Opposition to Jurisdictional Statement on Appeal	4
Memorandum Supporting Motion to Dismiss Appeal	5
Position of Amicus Curiae	5
Brief	5
Statement of the Case	5
The Bases of the Decision of the California Supreme Court	7
Argument	9
The Statement Fails Factually to Disclose Jurisdiction	10
The Decision Appealed From Rests on Constitutional and Decisional Grounds of Long Standing	14
Conclusion	15

TABLE OF AUTHORITIES CITED

Cases	Pages
Herb v. Pitcairn, 324 U.S. 117, 125-6 (1945)	9
Flourney v. Wiener, 321 U.S. 253	10
Merchants National Bank v. Escondido Irrigation District (1904), 144 Cal. 329 (77 P. 937)	15
Tulare Irrigation District v. Collins (1908), 154 Cal. 440 (97 P. 1124)	15

Statutes	
Omnibus Adjustment Act of 1926	12, 13
Reclamation Act of 1902, Section 8	13

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 993

THE IVANHOE IRRIGATION DISTRICT,
Plaintiff,

vs.

ALL PARTIES AND PERSONS, etc.,
Defendants,

THE STATE OF CALIFORNIA,
Defendant and Appellant,

COURTNEY McCRACKEN,
Defendant and Appellee.

Request for Leave to File as Amicus Curiae Memorandum Supporting Motion to Dismiss Appeal

EDSON ABEL, as attorney for the California Farm Bureau Federation, requests leave to file a memorandum *amicus curiae* supporting the motion to dismiss the appeal in the above entitled matter. As grounds for such request, applicant represents:

1. The California Farm Bureau Federation is a nonprofit membership corporation organized and existing under the laws of the State of California and composed of over 60,000 farmers actively engaged in agricultural pursuits within the State of California, many of whom are directly

and vitally interested in the outcome of this proceeding and the final determination of the issues therein.

2. One of the primary purposes for which said California Farm Bureau Federation was organized and is maintained is the advancement of the economic interests of its members and all farmers in California generally. The issues of the above proceeding have a direct bearing on those economic interests, a bearing somewhat more general in character and more related to future agricultural prospects in California than is true with respect to the parties to the proceeding themselves.
3. Consents of the counsel for appellants and appellee follow this request and are hereby made a part hereof.

WHEREFORE, applicant requests that he be given leave to file a memorandum supporting the motion to dismiss the appeal in the above matter as *amicus curiae* on behalf of the California Farm Bureau Federation. The proposed memorandum is included herein immediately following this request.

Respectfully submitted,

EDSON ABEL

Attorney for California Farm Bureau Federation

June 10, 1957.

In the Supreme Court of the United States
October Term, 1956
No.

The Ivanhoe Irrigation District
Plaintiff and Appellant,

vs.

All Parties and Persons, etc.,
Defendants,

The State of California
Defendant and Appellant,

Courtney McCracken
Defendant and Appellee.

CONSENT TO FILING OF AN AMICUS CURIAE BRIEF IN OPPOSITION TO JURISDICTIONAL STATEMENT ON APPEAL

The State of California and the Ivanhoe Irrigation District, the appellants herein, hereby consent to the filing of an amicus curiae brief by Edson Abel. Such brief is to be filed in opposition to the appellants' Jurisdictional Statement on appeal and is to be served on appellants on or before June 12, 1957. Such brief may be either on behalf of the California Farm Bureau Federation alone or on behalf of the California Farm Bureau Federation and the American Farm Bureau Federation.

Dated: San Francisco, California, May 13, 1957.

EDMUND G. BROWN, *Attorney General of the State of California*
B. ABBOTT GOLDBERG, *Deputy Attorney General*
ADOLPHUS MOSKOVITZ, *Deputy Attorney General*
By Sgd. B. ABBOTT GOLDBERG
B. Abbott Goldberg
Attorneys for Appellants

In the Supreme Court of the United States

October Term, 1956

No.

The Ivanhoe Irrigation District
Plaintiff and Appellant,

vs.

All Parties and Persons, etc.,
Defendants,

The State of California
Defendant and Appellant,

Courtney McCracken
Defendant and Appellee.

CONSENT TO FILING OF AN AMICUS CURIAE BRIEF IN OPPOSITION TO JURISDICTIONAL STATEMENT ON APPEAL

Courtney McCracken, appellee herein, hereby consents to the filing of an amicus curiae brief by Edson Abel. Such brief is to be filed in opposition to the appellants' Jurisdictional Statement on appeal and is to be served on appellants on or before June 12, 1957. Such brief is to be filed on behalf of the California Farm Bureau Federation.

Dated: San Francisco, California,
May 20, 1957

COURTNEY MCCRACKEN

By Sgd. HARRY HORTON
Harry W. Horton
Attorney for Appellee

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 993

THE IVANHOE IRRIGATION DISTRICT,
Plaintiff,

vs.

ALL PARTIES AND PERSONS, etc.,
Defendants,

THE STATE OF CALIFORNIA,
Defendant and Appellant,

COURTNEY MCCRACKEN,
Defendant and Appellee.

Memorandum Supporting Motion to Dismiss Appeal

POSITION OF AMICUS CURIAE

This memorandum supports the motion of appellee to dismiss the appeal in the instant case on the grounds that the judgment appealed from rests on adequate non-federal grounds and that the appeal does not present a substantial federal question.

Brief

STATEMENT OF THE CASE

The facts here stated will for the most part only supplement those appearing elsewhere and will be repetitious only to the extent necessary to set forth such supplemental facts in their proper perspective.

This case arose under an *in rem* proceeding authorized under California law and is a required validation proceeding under a contract between the United States and the Ivanhoe Irrigation District. Under this contract the United States agreed to build an irrigation water distribution system for the District and to deliver to such distribution system a supply of irrigation water from the Central Valley Project of California.

The United States obtained the water supply for the Central Valley Project by appropriations in its own right under California law for the use and benefit of the Central Valley Project, by assignments of rights under applications made by the Director of Finance of the State of California for the use and benefit of the Central Valley Project and the landowners to be served from the Project, by acquisition of riparian, appropriative and prescriptive water rights in the San Joaquin River once held by Miller & Lux, Inc., and others, and finally by assignment to it of appropriative rights held by the Madera Irrigation District. All of the water rights so acquired were founded in the water laws of the State of California and were the voluntary acquisitions of the United States.

The contract in issue here would require the appellant District to limit its deliveries of water to appellee McCracken to 160 acres and leave him without such service as to the remainder of his 309 acres, notwithstanding each of the 149 acres discriminated against had paid and under California Irrigation District law was obligated for the future to pay equally with each favored acre for the water rights and other District services related to irrigation water distribution.

Appellee opposed confirmation of the contract between the United States and the Ivanhoe Irrigation District on various statutory and constitutional grounds but particu-

larly on the ground that the 160-acre limitation in the contract is not applicable and is invalid as to him and his property within the district as violative of his rights under the protective provisions of the California Constitution.

THE BASES OF THE DECISION OF THE CALIFORNIA SUPREME COURT

The California Supreme Court in its own language bases its decision as follows (app. 63-4):*

"In accordance with the foregoing it is concluded:

(1) That the plaintiff is an irrigation district duly organized, existing and operating as such under the laws of this state.

(2) That the title to the unappropriated domestic waters of the state is in the State of California in trust for the water users of the state as beneficiaries and such waters are subject to appropriation under the laws of the state.

(3) That the United States as assignee of appropriative rights, as original appropriator thereof, and in the acquisition of other rights for the same purpose stands in the same relation to such beneficial owners as does the state, namely, as trustee for such beneficial owners and is answerable for the faithful performance of that trust.

(4) That in distributing the water contracted to be delivered to the District, the United States does so as a purveyor of water at a price for the benefit of the water users of the District.

(5) That in so delivering the water to the District it is not competent for the United States or the District, either or both, to discriminate against the present or potential water users in the District on the basis of the amount of land owned by them, and that the 160-acre limitation contained in the original Recla-

*For convenience of the Court, "app" refers to appellants' appendices to its Jurisdictional Statement.

mation Act is inapplicable to the subject matter of the contract and improperly contained therein.

(6) That insofar as the contract provides for the construction of works for the storage and distribution of water to and by the District, the relationship of the parties is that of contractor and contractee. Upon the completion of the construction work the District is obligated under the law to pay for the same within 40 years in equal annual installments. Upon the completion of such payments the District is entitled to ownership of the works and property of the storage and distribution system free from any claims of the United States.

(7) That insofar as the contract provides for furnishing water to the District at a price the United States in acting as a purveyor of domestic waters of the state to the District, under federal law, is bound to observe and comply with the laws of the state with reference to the rights which are vested in the water users being served or entitled to be served. In this respect neither the state nor any of its agencies may contract or otherwise provide that the distribution of water to those for whose benefit the right to the water was acquired may be arbitrarily discontinued.

The judgment is affirmed."

A careful analysis of these conclusions and their supporting discussions demonstrates beyond the peradventure of a doubt that they rest solely upon the Constitution, statutes and decisional law of the State of California. The California Supreme Court adhered strictly to the question of the statutory and constitutional powers of the Ivanhoe Irrigation District to contract with anybody, including the United States, to the extent attempted in the contract proposed for validation. The question did not involve any powers, authorities or attributes of the United States; it

was solely a question of the power of the appellant District under California law to contract in the manner and to the extent proposed in its agreement with the United States.

Just prior to setting forth the foregoing conclusions of law upon which it rested its decision, the California Supreme Court expressly discarded all other issues offered for its consideration in the following language (app. 62):

> "The trial court in its findings of fact and conclusions of law declared the contract to be invalid on numerous additional grounds not carried into the judgment. Conclusions that the contract is uncertain, lacks mutuality, improperly delegates powers to the Secretary of the Interior, improperly prevents changes in the boundaries of the district, provides unreasonable security measures to the United States and other conclusions not necessary to the judgment are insufficiently supported when considered in connection with the views herein expressed as to the terms under which the parties may properly contract."

In other words, the Supreme Court explicitly limited the bases of its decision to the conclusions which it specifically set forth in its decision (app. 63-4) and, as has been commented on, explicitly discarded all other possible grounds for its decision (app. 62).

ARGUMENT

On the basis of the California Supreme Court's own conclusions of law, it is apparent that that court found it unnecessary to, and did not, go beyond California constitutional and decisional law in reaching the judgment it did. For that reason, the following rule of *Herb v. Pitcairn*, 324 U.S. 117, 125-6 (1945), applies:

> "This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent

> state grounds * * *. The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our jurisdiction. Our only power over state judgments is to correct them to the extent that they inaccurately adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we correct its views of federal laws, our review could amount to nothing more than an advisory opinion."

So also the pronouncement of Mr. Chief Justice Stone in *Flournoy v. Wiener*, 321 U.S. 253, 262, to the effect:

> "* * * we have repeatedly held that where the judgment of a state court rests in part on a non-federal ground adequate to support it, this Court will not consider the correctness of the decision which the state court also made of a federal question otherwise reviewable here."

The foregoing decisions establish a rule which is not difficult of application in the absence of confusion, purposeful or otherwise.

With such brief consideration, this memorandum adopts the affirmative presentation of the appellees on the issue and turns its attention to the attempt of the Jurisdictional Statement (hereinafter referred to as Statement) to establish some legitimate federal question.

THE STATEMENT FAILS FACTUALLY TO DISCLOSE JURISDICTION

In an effort to fashion the required jurisdictional base, appellants stretch beyond its elastic limits the meaning of the language of the California Supreme Court's decision. Notwithstanding that Court's repeated declarations that it

was concerned only with the validity of the contract which is the subject of the proceeding, appellants have consistently and continuously gone far afield in an effort to bring the decision within the realm of federal jurisdiction by consistently, continuously and erroneously treating the decision as based on federal law.

Illustrative of this effort is the averment in the Statement, page 6, that "the California Supreme Court has held * * * that certain federal statutes are unconstitutional." One would have a right to expect some specifications to support such a broad and unqualified assertion but the Statement contains none and diligent search of the decision has failed to reveal any language genuinely capable of such an interpretation. It is true that the California court discussed various federal statutes but such consideration was purely incidental to their relation to the contracting powers of the appellant Ivanhoe District under California law, and did not in any instance go so far as to even intimate unconstitutionality.

After this delusive and unsupported assumption, the Statement then jumps right over to a postulation of a whole series of questions, every one undeniably federal in character but infected with the same basic delusion. These questions all presuppose that the California court made some determination on matters referred to in them, when the Court at the most merely gave them passing mention. It did not have to decide any of the questions and carefully avoided even the appearance of doing so. As stated above, the California Court adhered strictly to the question before it which was whether the appellant Ivanhoe District could under California law enter into the contract with the United States offered for judicial consideration.

Then on page 18 of the Statement, a corollary and equally erroneous allegation is made that the appeal in the instant

case presents the federal questions previously postulated in the apparent hope that repetition would supply a verity otherwise lacking.

At this same point, it is again erroneously assumed:

> "* * * where the federal questions were actually considered and decided by the highest court of the state, references to whether, how and when they were raised in the trial court are not necessary for the purpose of establishing the jurisdiction of the United States Supreme Court * * *."

With this clever avoidance of what otherwise would have been an embarrassing problem, the Statement continues its labor in an effort to give substance to the illusion that the California court declared certain federal statutes unconstitutional when all that court ever did was to find the provisions of the contract before it to be beyond the lawful powers with which the District had been endowed. It would seem that in view of the California court's explicitness in this respect, there would be little excuse for appellants to so mislead themselves.

As previously indicated on page 9, *supra*, if federal questions were raised in the trial court, the California Supreme Court brushed aside consideration of them as unnecessary to its decision.

On page 19 of the Statement, under "A", it is said:

> "The majority of the California Supreme Court concluded that the 160-acre water limitation provisions in all contracts are invalid. The provisions are required by the plain words of federal law * * * and are properly includible under state law * * *."

The implication is that the California Supreme Court interpreted the federal Omnibus Adjustment Act of 1926. This the Court did not do. It did say that *if* the language

of the Omnibus Adjustment Act was to be interpreted as requiring the 160-acre limitation in the instant contract, the Omnibus Act ceased to be an "applicable" federal law by reason of objections resting in the constitution and statutes of California. So far as the provisions referred to as being "properly includible under state law" are concerned, the question should be settled by the final judgment of California's highest court that they were not.

On page 21, the Statement includes an implication that the California Supreme Court used its own interpretations of the Omnibus Adjustment Act and Section 8 of the Reclamation Act of 1902 to reach certain of its conclusions. Reference to the language of the decision (app. 50-51), shows clearly that this is a misinterpretation of what the California court actually said. It merely held that the theories of appellants would be sound only *if* the United States was "the owner absolute of the domestic waters of the state with the right to the use thereof freed from trust relationship on behalf the real owners thereof, namely, the water users in the district." On the contrary, the court held that "the title to the water to be purveyed is not an unlimited title in the United States." This, of course, is the conclusion reached strictly on the basis of California water law and is not related in any way to the federal statutes appellants would like to intrude into the consideration.

On page 22 of the Statement appears:

> "The majority of the Court also held invalid *as a matter of federal law* the article found in each district's contract providing that title to all of the project works * * *." (Italics supplied.)

The only trouble with this allegation is that there is nothing in the decision either to support or even suggest it. It is to be noted that there is no attempt to indicate the

particular point in the decision where this is supposed to have occurred. The decision shows very clearly that federal law had nothing to do with the holding. It was pure California law.

On page 23 appears another very apparent misconstruction of the Court's decision. It is said:

> "Finally, the majority concluded that the provisions of the contracts with the United States relating to delivery and payment for a water supply are illegal * * *."

The Court held that the provisions referred to were beyond the power of the District to accept, which obviously is vastly different from the interpretation used in the Statement. Here again, appellants claim the objectionable provisions are authorized by California law but the California Supreme Court said they were not.

It is submitted that the Statement fails completely to disclose any substantial federal ground for the jurisdiction of this Court but on the contrary the very specifications in the Statement, when appraised factually, demonstrate the fidelity with which the California Supreme Court kept constantly before it the only question for its decision and that was, had the Ivanhoe Irrigation District, an agency of the State of California, been endowed by the statutes and the constitution of California with the powers necessary to permit it to enter into the contract before the California Supreme Court for consideration.

THE DECISION APPEALED FROM RESTS ON CONSTITUTIONAL AND DECISIONAL GROUNDS OF LONG STANDING

The Statement implies that something new has been added to California decisional water law to achieve an invalidation of the 160-acre limitation. Nothing could be farther from the fact. As appears from the California Supreme

Court's decision, in this case the present legal attributes of the domestic waters of California originated many years ago.

Merchants National Bank v. Escondido Irrigation District (1904), 144 Cal. 329 (77 P. 937);

Tulare Irrigation District v. Collins (1908), 154 Cal. 440 (97 P. 1124).

There has never been any substantial question of the trustee status occupied by a water distribution agency in California with respect to its water supply. It was the law in 1935 when the United States first became interested in the Central Valley Project and it was the law when the United States, of its own free will and accord, acquired without objection as to their limitations the water rights for the Central Valley Project which it now seeks to divest of their trust character.

CONCLUSION

The judgment below in this case rests on an adequate non-federal basis; no substantial federal question is presented. The appeal should be dismissed, and a writ of certiorari denied.

Respectfully submitted,

EDSON ABEL
Attorney for California Farm Bureau Federation

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JUN 25 1957
JOHN T. FEY, Clerk

Nos. ~~993, 994, 995, 996~~ 122, 123, 124, 125

In the Supreme Court of the United States

OCTOBER TERM, 1956

THE IVANHOE IRRIGATION DISTRICT AND THE STATE OF CALIFORNIA, APPELLANTS

v.

COURTNEY MCCRACKEN, ET AL.

THE MADERA IRRIGATION DISTRICT AND THE STATE OF CALIFORNIA, APPELLANTS

v.

CARL F. STEINER, ET AL.

THE MADERA IRRIGATION DISTRICT, APPELLANT

v.

PHILLIP AND JANE E. ALBONICO

THE SANTA BARBARA COUNTY WATER AGENCY, APPELLANT

v.

MAURICE A. BALAAM, ET AL.

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF JURISDICTION

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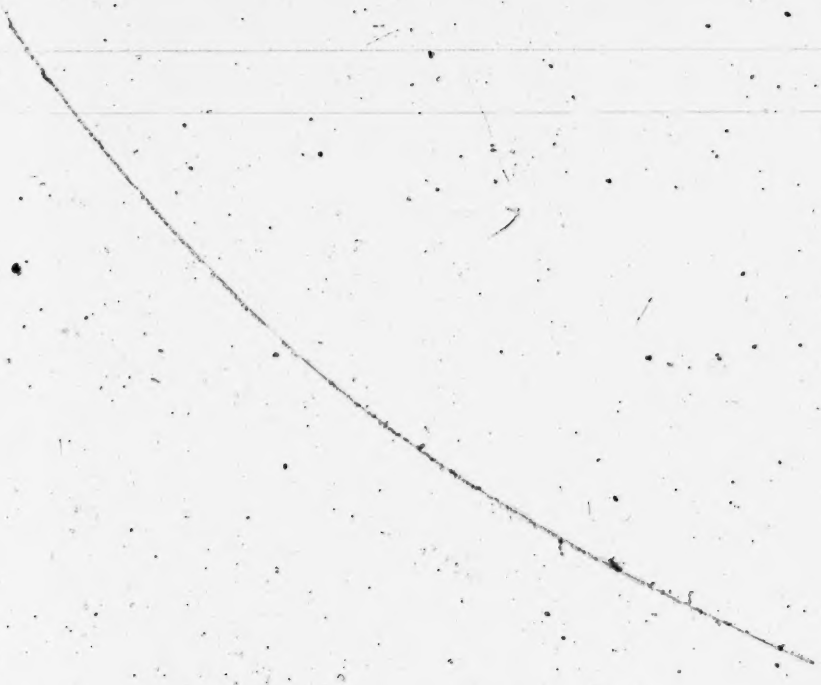

INDEX

	Page
I. The United States is vitally interested in these cases	2
II. The United States takes the position that the contracts are valid and that the decisions misconstrue and misapply Federal law	3
Conclusion	5

CITATIONS

Cases:	
Clackamas County, Oregon v. *McKay*, 226 F. 2d 343, certiorari denied, 350 U. S. 904	4
United States v. *Gerlach Live Stock Co.*, 339 U. S. 725	2, 4
Constitution:	
Article I, sections 8 and 10	4
Article IV, section 3	4
Article VI	4
Amendment XIV	4

430229—57

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 993

THE IVANHOE IRRIGATION DISTRICT AND THE STATE OF CALIFORNIA, APPELLANTS

v.

COURTNEY MCCRACKEN, ET AL.

No. 994

THE MADERA IRRIGATION DISTRICT AND THE STATE OF CALIFORNIA, APPELLANTS

v.

CARL F. STEINER, ET AL.

No. 995

THE MADERA IRRIGATION DISTRICT, APPELLANT

v.

PHILLIP AND JANE E. ALBONICO

No. 996

THE SANTA BARBARA COUNTY WATER AGENCY, APPELLANT

v.

MAURICE A. BALAAM, ET AL.

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF JURISDICTION

I

THE UNITED STATES IS VITALLY INTERESTED IN THESE CASES

The United States has a direct interest in the outcome of these cases from several standpoints. Most immediate is the administration of the Central Valley project, a "gigantic" reclamation project which is described in broad outline in *United States* v. *Gerlach Live Stock Co.*, 339 U. S. 725. Operation of the project has required execution of several contracts with substantially the same provisions as that with the Ivanhoe Irrigation District. Chief Justice Gibson does not, we believe, overstate the case when he says in his dissent that the *Ivanhoe* decision "undermines the very foundation of federal reclamation policy and threatens to end the flow of federal funds into this state for reclamation and irrigation purposes at a time when the need for rapid development of our water resources is most critical" (Appendix to Jurisdictional Statement, p. 64, hereafter cited as Jur. St. App.). In view of the positive directions of Congress, the prohibition against inclusion of the questioned provisions in the contract creates a problem of major proportions with regard to the Central Valley project.

The *Santa Barbara* case, which involves a proposed contract with regard to waters of the Cachuma federal reclamation project, shows that the scope of these decisions goes even beyond the Central Valley project and creates extremely serious obstacles to the execution of federal reclamation laws throughout California.

Nor is the impact of the decisions limited to California. The subjects dealt with, especially the 160-acre limitation and the repayment provisions, are generally applicable throughout the 17 western states. These decisions are obviously therefore of great importance to the entire federal reclamation program.

II

THE UNITED STATES TAKES THE POSITION THAT THE CONTRACTS ARE VALID AND THAT THE DECISIONS MISCONSTRUE AND MISAPPLY FEDERAL LAW

While the United States is not a party to these cases, counsel for the Bureau of Reclamation appeared as *amicus curiae* in the trial court in the *Ivanhoe* case to state the federal position (Jur. St. App., pp. 3–4). That position is that the provisions of the contracts are valid and, in fact, are compelled by the federal reclamation law which is wholly constitutional. The same position was likewise stated to the Supreme Court of California in a Memorandum as *Amicus Curiae* Filed by the United States in Connection with the Petitions for Rehearing.

We believe that the majority opinions in these cases have, in many particulars which will not now be discussed, misconceived the basis for the power exercised by Congress, the correct construction and application of the federal statutes, and the results which follow therefrom. The United States intends, in the event that probable jurisdiction is noted, to explain and clarify these matters as *amicus curiae*.

An example, illustrative of the issues of great constitutional importance presented by the litigation, may be noted here. The opinions of the Supreme Court of California recognize the fact that the United States has acquired the water rights of many landowners in the Central Valley by purchase or by payment of judgments in proceedings under the power of eminent domain. The situation in *United States v. Gerlach Live Stock Co.*, 339 U. S. 725, holding that the United States had taken and was required to compensate several owners of lands along the San Joaquin River is typical of the latter category. There is no indication that the title which was acquired in those transactions was anything less than or different from that possessed by the Government's grantor or the party from whom title was acquired. Nevertheless, the majority opinion seems to hold that the United States is not the absolute owner of the rights so acquired. Such a discrimination and attempted limitation of the rights of the United States, as contrasted with those of other owners of water rights, would be a violation of the rights of the United States under the Federal Constitution, especially Article I, sections 8 and 10; Article IV, section 3; Article VI; and Amendment XIV. As the court expressed it in *Clackamas County, Oregon* v. *McKay*, 226 F. 2d 343, 345 (C. A. D. C.), certiorari denied, 350 U. S. 904:

> When the United States acquires, by eminent domain or otherwise, a tract of land in a State, it becomes the owner, and thereafter disposition is within the unfettered discretion of Congress. No overriding sovereign governmental author-

ity of the State impinges upon that discretion or gives rise to power on the part of courts to interfere with that disposition.

Clearly, the same principle should apply to the property represented by water rights acquired by the United States within a state.

CONCLUSION

We believe that issues of federal law of tremendous concern to the entire reclamation program are here presented and that probable jurisdiction should be noted.

Respectfully submitted,

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JUNE 1957.

U. S. GOVERNMENT PRINTING OFFICE: 1957

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 122

THE IVANHOE IRRIGATION DISTRICT, *Plaintiff and Appellant,*

vs.

ALL PARTIES AND PERSONS, etc., *Defendants,*

THE STATE OF CALIFORNIA, *Defendant and Appellant,*

COURTNEY McCRACKEN, *Defendant and Appellee.*

No. 123

THE MADERA IRRIGATION DISTRICT, *Plaintiff and Appellant,*

vs.

ALL PERSONS, etc., *Defendants,*

THE STATE OF CALIFORNIA, *Defendant and Appellant,*

CARL F. STEINER, *et al.*, *Defendants and Appellees.*

No. 124

THE MADERA IRRIGATION DISTRICT, *Defendant and Appellant,*

vs.

PHILIP and JANE E. ALBONICO, *Plaintiffs and Appellees.*

No. 125

THE SANTA BARBARA COUNTY WATER AGENCY, *Plaintiff and Appellant,*

vs.

ALL PARTIES AND PERSONS, etc., *Defendants,*

MAURICE A. BALAAM, *et al.*, *Defendants and Appellees.*

Appeals From the Supreme Court of California.

Brief on Behalf of the Irrigation Districts Association of California, as Amicus Curiae in Support of Respondents.

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SUBJECT INDEX

	PAGE
The position and interest of the Association	2
Opinions below	8
Jurisdiction	8
Statutes involved	9
Questions presented	9
Statement of the case	10
Argument	10
Conclusion	12

TABLE OF AUTHORITIES CITED

Cases	Page
United States v. Gerlach, 339 U. S. 725	11

Statutes	
Act of July 2, 1956, Sec. 4	8, 11
Reclamation Act of 1902, Sec. 8	8, 11
State Validation Act of 1949 (Stats. 1949, p. 1511)	8
66 Statutes at Large, p. 560	9, 11
70 Statutes at Large, p. 483	11
United States Code, Title 43, Sec. 485, 1956 Supp. p. 108	11
United States Code, Title 43, Sec. 666(a)	9, 11

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Appeals From the Supreme Court of California.

Brief on Behalf of the Irrigation Districts Association of California, as Amicus Curiae in Support of Respondents.

By stipulation of the respective counsel herein the Irrigation Districts Association of California through its authorized counsel submit for filing this Brief, *Amicus Curiae*, in support of the position of the respondents herein and in connection therewith submit to this Honorable Court the following:

The Position and Interest of the Association.

The Irrigation Districts Association of California is a voluntary association of 177 public agencies of the state, with 82 of these agencies being irrigation districts, organized under the California Irrigation Districts Act, and 95 being county water districts, reclamation districts, water storage districts, water conservation districts, and districts organized under the California Water Districts Act. The association was formed in 1910 and presently represents districts in 37 counties throughout the length of the state, serving 4½ million irrigated acres out of a total irrigated acreage of 7¼ million.

All of these public agencies have many features in common. They are generally governed by Boards elected by the voters of the community; they possess the powers of perpetual succession, of eminent domain, of general taxation or special assessment exercised either through their own taxing machinery or that of the county; and they have the power to acquire water rights and all manner of water works, and to distribute irrigation and domestic water. All of the enabling acts under which said agencies were created represent the exercise of the authority of the state for the solution of the prime problem of civilization in the arid West, the supply of domestic water to its inhabitants, and of irrigation water without which agriculture cannot exist.

Most of these agencies have as their chief function the supplying of irrigation and domestic water to communities and farming areas within the state, and in implementing and exercising these functions such agencies are vitally concerned with and interested in any matter which relates to the acquisition and distribution of water within the State of California.

Upon the entry into California of the Bureau of Reclamation in the early history of the Central Valley Project, which is recited in the decision in the *Ivanhoe* case, this Association endeavored to ascertain the practical as well as the legal aspects of the entry of the United States into the project. It was through the efforts of this Association and its representatives that there came to light the contentions and interpretations of the Bureau of Reclamation and the Secretary of Interior as to matters herein involved. It was ascertained that the so-called 9(e) contract was what the Secretary of Interior and Commissioner of Reclamation designated as a "utility-type contract"; that the contract under that designation recognized no water right of the landowners within the district except during the 40-year contract period and no right which was either appurtenant to the land or permanent; that no right of renewal was recognized or could in fact be promised or provided for; that the contract was not intended to be and would not be construed as a repayment contract; and that, therefore, there would be none of the incidents of repayment and no credit upon capital costs even when the full capital costs had been repaid.

This contention and interpretation of the Bureau of Reclamation and the Secretary of Interior prompted the Association to adopt a set of principles on November 4, 1947, which it has ever since advocated as its position as

an Association on behalf of its member organizations. The statement of principles and objectives reads as follows:

"Irrigation Districts Association of California
STATEMENT OF PRINCIPLES AND OBJECTIVES

WHEREAS:

1. The sound solution of any problem prescribes two fundamentals and their understanding, namely, the real objective to be accomplished, and the means or method to be used in attaining that objective.

2. In California, as well as in most of the seventeen Western States, the available water supply, its development, and its distribution are so interwoven with the economic and social welfare and interests of the people and their enterprises, that the water problem has become one of vital and paramount significance to the entire commonwealth.

3. To pass judgment on this problem or any proposal for its solution requires knowledge of the desired objectives, the method to be used in attaining those objectives, as well as an analysis of the probable effects and results which would accrue.

4. In California, both planning and actual construction have been underway for some time leading to the development and conservation of available water supplies; and the people of the State are now faced with the problem of adopting a feasible and equitable method of securing the distribution of this water.

5. The Irrigation Districts Association of California, for the past several years, has made a study of the problems involved, and the means and methods proposed for their solution, declaring from the beginning that certain basic principles must be safeguarded in the interests of all the districts and all the water users in California; and after thorough discussion at

various meetings of the Irrigation Districts Association, these basic principles have been accepted and adopted as sound and practical.

6. The Irrigation Districts Association's representatives and committees, which have studied these matters for years, feel that in fairness to all concerned, and in the interests of all local communities and their people, who should have the opportunity of passing intelligent judgment on these problems, the facts and issues involved should be brought to each respective community.

THEREFORE:

To this end and in the interests of each community's own study and determination of the issues and matters involved, there are submitted, herewith, a set of principles and objectives which provide the basis for a satisfactory solution to the complicated water problem of California.

1. It is a basic principle that the waters within the State of California belong to the people of California and its water agencies and users; and not to the Federal Government. This basic principle must be safeguarded and protected at all costs.

2. Government by local control is likewise a traditionally accepted basic principle and there should be no departure from it. Local areas and districts should operate their own water systems under California law.

3. Existing and vested water rights and sources of supply must be protected from any and all encroachments. Federal and other adverse claims upon those water rights and sources of supply, through commingling, storage, and other controls, handling and usage must not be permitted to impair those water rights and sources of supply.

4. New or supplemental water supplies should be fixed, definite and permanent, and not be subject to constant renegotiation.

5. Underground sources of water supply should be protected. District and private rights to such underground sources may be made the subject of adverse Federal claims if not affirmatively protected.

6. It is fundamental in California that a landowner within an irrigation district is entitled to his portion of the available water, in accordance with the assessed valuation of his land. There must be no violation or disturbance of this basic principle.

7. If and when suitable water contracts can be had, all payments made thereon should be credited, after reasonable operation and maintenance costs, to the cost of the project; and credited to the agencies making such payments, to the end that when the properly reimbursable costs have been returned to the government, the project will be locally owned.

8. The proposal that a Federal agency should own and operate intrastate projects in perpetuity, and serve water as a Federal utility, is inconsistent with state and local ownership and control of water and water rights. Such proposals should be opposed.

9. The Federal Government should not be permitted to apply its soil or land classifications to privately owned lands in order to dictate what lands can or cannot be farmed or for what crops such lands may be used.

10. Artificial and arbitrary limitations in acreage, as applied to lands in private ownership, is unworkable, unsound, and contrary to free enterprise, and must not be permitted.

11. The operation or supervision of local projects by Federal bureaus and/or their officials, through

rules, regulations or otherwise, is impractical, unsound illegal and menacing to the principles of democratic government, and must not be permitted.

12. Investigation, designing and construction of reclamation and flood control projects by Federal agencies, which are historically qualified to undertake such projects; and the use of a fair share of Federal funds, which, in fact, are contributed in Federal taxes by California, for the construction of such projects, should be approved but only when they come within the following qualifications:

a. The project should be economically feasible and capable of repaying the properly reimbursable costs.

b. Federal agencies should confine their efforts to construction of projects, with the operation and maintenance of such projects to be turned over to competent local agencies, responsible under California laws." [Ex. "82", *Ivanhoe* case, Rep. Tr. p. 95, line 7, Hearing April 3, 1951.]

The Association has been and still is opposed to the so-called acreage limitation provisions of these contracts and is also opposed to any position to the effect that the State water laws are not to be observed by the Federal Government or which would result in the State authorities not having jurisdiction over water problems within the State of California. This is particularly true as to State determination and adjudication of applications to appropriate water and the issuance of permits and licenses, subject to such conditions and restrictions as may be deemed proper under California law. State courts are historically the proper forum for the interpretation of the legal validity of such conditions and restrictions.

Opinions Below.

The opinions below are correctly and fully referred to in the brief of the respondents.

Jurisdiction.

The Association adopts the substance of respondents' contentions concerning jurisdiction, restating and adding the following:

That the State Supreme Court held the *State Statutes* relied on by appellants (District Federal Cooperation Act, Appellants' Appendix F, p. 109, and State Validation Act of 1949, Stats. 1949, p. 1511), *invalid* as a matter of state law.

That the reclamation laws of the United States make the respective state water laws of the 17 Western States, including California, applicable in relation to the control, appropriation, use and distribution of water used in irrigation in those states. That state laws determine the permanency and appurtenancy of such water rights. (Sec. 8 of the Reclamation Act of 1902—Appellants' Appendix A, p. 94—and Sec. 4 of Act of July 2, 1956—Appellants' Appendix E, p. 108.)

That the United States in its relation to intrastate water matters has been by Congress, as a matter of policy, made amenable to state laws and jurisdiction.

> "Consent is hereby given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United

States is a necessary party to such suit. The United States, when a party to any such suit, shall (1) be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty, and (2) shall be subject to the judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances: Provided, That no judgment for costs shall be entered against the United States in any such suit." (66 Stats. 560, Title 43, U. S. C., Sec. 666(a).)

It is submitted that the United States cannot do by argument in *Amicus Curiae* appearances that which it could not accomplish in direct litigation.

Statutes Involved.

The respondents' citation of statutes and laws involved are hereby adopted by the Association with the addition of the following:

The Act of July 10, 1952, 66 Stats. 560, Section 666(a), Title 43, United States Code.

Questions Presented.

Does a state court have the exclusive jurisdiction to determine whether a public agency of that state has the legal power or right to execute a contract under state law? If so, did the Supreme Court of California declare that an irrigation district or other California public agency dealing with water supplies was not, and could not be, authorized by the California Legislature to execute the contracts in question?

Do the Federal laws subject the Bureau of Reclamation and Department of Interior, in reclamation projects in the 17 Western States, to state laws on water matters —or may the United States in reclamation projects ignore state laws and operate intrastate projects in contravention of state laws and solely upon Federal powers, assumed or existant?

Statement of the Case.

The Association adopts the statement of the case as set forth in the brief of the Respondents.

Argument.

The Association endorses and adopts the arguments advanced in Respondents' brief with the following comments:

Under the history of the water laws of the West existing civilizations have been developed on the basis of priority of appropriation and permanency and appurtenancy of water rights. Since before 1902 and certainly thereafter the courts of this country, both federal and state, have recognized the necessity of adhering to this principle and state customs and water laws in relation to the appropriation and use of water have been basic and so recognized by Congress.

We are here confronted with a direct clash of legal principles. Appellants assert that federal law and only federal law is at issue and that in reclamation projects the United States is exercising a constitutional power and may even in intrastate water matters bypass or ignore state water laws. The Association takes the position that in federal reclamation projects, especially intrastate in character, the whole historical background has been based

on recognition of state laws by the Bureau and Department and by Congress.

It is only where we find some administrative practice or interpretation or some implied repeal being urged to justify complete federal control that the conflict arises.

Appellants, in substance, urge that Section 8 of the Reclamation Act of 1902 has been repealed by implication or that by some process it has become inapplicable to the Central Valley Project. (*Ivanhoe* Decision at p. 58, Appendix to Appellants' Jurisdictional Statement.)

It is respectfully submitted that the basic principle that state water laws are applicable and are to be followed in federal reclamation projects is still correct and necessary and has been and is so recognized and directed by Congress.

Not only did Section 8 of the Reclamation Act of 1902 so declare but as applied to the Central Valley Project of California it was and is so claimed by the then Bureau of Reclamation Administration and it was so held in *United States v. Gerlach*, 339 U. S. 725 at *739* and footnote 15 on page 740.

Since then, and in recognition of the merits of the position supported by the Association, in 1952 Congress enacted 66 Stats. 560, Title 43, Section 666(a), United States Code.

As a statement of principle it is submitted such enactment refutes any implied withdrawal of the application of state water laws to federal reclamation projects.

In 1956, Congress enacted laws which recognize the necessity of meeting the requirements of state law. (See Sec. 4 of Act, 70 Stats. 483. 43 U. S. C. 485 h 1956 Supp., p. 108, Appendix to App. Op. Br.)

Therefore the Association contends that:

(1) The formulation of rules and regulations governing use of intrastate waters acquired by appropriation, purchase, or by any other means, is properly, a function of the state in which such water originates and is used.

(2) The source of such rules and regulations is the laws of such state and the forum in which they are interpreted and adjudicated is the courts of such state.

(3) The validity of contracts entered into by public agencies of the state is exclusively a matter for state determination.

(4) The Federal government in voluntarily entering the state for the purpose of developing the waters of the state for public use therein and distributing such waters through the media of such state agencies must conform to such rules and regulations pursuant to such interpretation and adjudication.

Conclusion.

For the reasons stated, it is respectfully submitted that the appeals be denied, or in the alternative that the judgments of the Supreme Court of California should be affirmed.

Dated: March 26, 1958.

Respectfully submitted,

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Nos. 122, 123, 124, 125

In the Supreme Court of the United States

OCTOBER TERM 1957.

THE IVANHOE IRRIGATION DISTRICT AND THE STATE OF CALIFORNIA, APPELLANTS

v.

COURTNEY McCRACKEN, ET AL.

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THE MADERA IRRIGATION DISTRICT, APPELLANT

v.

PHILLIP AND JANE E. ALBONICO

THE SANTA BARBARA COUNTY WATER AGENCY, APPELLANT

v.

MAURICE A. BALAAM, ET AL.

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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INDEX

	Page
Opinions below	2
Jurisdiction	2
Questions presented	2
Statutes involved	3
Statement:	
1. The Central Valley project	8
2. The Cachuma Unit of the Santa Barbara County project	12
3. The Ivanhoe District and its contract	13
4. The Madera District and its contract	16
5. The Santa Barbara Agency and its contract	17
6. The Ivanhoe litigation in the trial court	19
7. The Madera litigation in the trial court	20
8. The Santa Barbara litigation in the trial court	21
9. The decisions of the Supreme Court of California	21
Summary of Argument	23
Argument:	
I. The interest of the United States	28
A. The United States is vitally interested in establishing the validity of the contracts here involved	28
B. Although vitally interested in the validity of the contracts, the United States cannot be bound by the decisions below with respect to its own legal rights and powers since it was not a party to the State proceedings	29
II. This Court has jurisdiction to review the decisions of the California Supreme Court since they rest on federal grounds	31
III. Congress has authorized the inclusion of the 160-acre limitation and the repayment provisions in contracts to be entered into by the Bureau of Reclamation and the State irrigation districts	34
A. Congress has unequivocally manifested its intention that the excess land laws shall apply in California and to the Central Valley and Santa Barbara projects	36

Argument—Continued
III. Congress has authorized, etc.—Continued
B. Congress has expressly approved the terms of the contracts with regard to repayment ..... Page 42
IV. The Federal Government has constitutional power to impose the disputed contractual requirements 49
A. The Federal Government has constitutional power to undertake the Central Valley and Santa Barbara projects 49
B. The Federal Government may impose reasonable conditions on the receipt of federal monies and the use of federal property 50
C. The disputed contractual provisions are such reasonable conditions 53
1. The 160-acre limitation 53
2. The contract provisions as to repayment, etc 60
D. It is unnecessary to decide issues of title to water rights 65
Conclusion 69
Appendix:
A. Synopsis of the history of the 9 (e) repayment provision 70
B. Legislative and administrative materials relating to the Central Valley project 74
C. Appropriations for the Bureau of Reclamation, Department of the Interior 87

CITATIONS

Cases:
Alabama v. *Texas*, 347 U. S. 272 51
Arizona v. *California*, 283 U. S. 423 38
Baltimore National Bank v. *Tax Commission*, 297 U. S. 209 38
Beard's Erie Basin, Inc. v. *People of New York*, 142 F. 2d 487 58
Berman v. *Parker*, 348 U. S. 26 52

Cases—Continued

	Page
Brasier v. *United States*, 223 F. 2d 762, certiorari denied, 350 U. S. 913	30
Briegel v. *Briegel*, 307 Pa. 93, 160 Atl. 581	58
Brooks v. *Dewar*, 313 U. S. 354	42
California Oregon Power Co. v. *Beaver Portland Cement Co.*, 295 U. S. 142	68
City of Tacoma v. *The Taxpayers of Tacoma*, No. 509, this Term	56
Clackamas County v. *McKay*, 226 F. 2d 343, certiorari denied, 350 U. S. 904	67
Federal Power Commission v. *Idaho Power Co.*, 344 U. S. 17	25, 51, 52
Federal Power Commission v. *Oregon*, 349 U. S. 435	68
First Reformed Dutch Church v. *Croswell*, 210 App. Div. 294, 206 N. Y. S. 132	58
Fleming v. *Mohawk Co.*, 331 U. S. 111	42
Flynn v. *Flynn*, 171 Mass. 312, 50 N. E. 650	58
Fourco Glass Co. v. *Transmirra Corp.*, 353 U. S. 222	38
Ginsberg & Sons v. *Popkin*, 285 U. S. 204	38
Girouard v. *United States*, 328 U. S. 61	38
Grayson v. *Harris*, 267 U. S. 352	34
Harris v. *Kansas City*, 293 Mo. 572, 239 S. W. 1077	58
Helvering v. *Davis*, 301 U. S. 619	50
Ickes v. *Fox*, 300 U. S. 82	29
Indiana ex rel. Anderson v. *Brand*, 303 U. S. 95	34
Inland Steel Co. v. *N. L. R. B.*, 170 F. 2d 247, affirmed *sub nom. Communications Association* v. *Douds*, 339 U. S. 382	52
International Steel Co. v. *National Surety Co.*, 297 U. S. 657	34
Kohl v. *United States*, 91 U. S. 367	56
Leiter Minerals, Inc. v. *United States*, 352 U. S. 220	23, 31
Leslie Miller, Inc. v. *Arkansas*, 352 U. S. 187	53
Long v. *Long*, 99 Ohio St. 330, 124 N. E. 161	58
Lux v. *Haggin*, 69 Cal. 255, 4 Pac. 919, 10 Pac. 674	68
MacEvoy Co. v. *United States*, 322 U. S. 102	38
Mason Co. v. *Tax Comm'n*, 302 U. S. 186	42
McClung v. *Silliman*, 6 Wheat. 598	51

Cases—Continued

	Page
Minnesota v. *United States*, 305 U. S. 382	31
Nebraska v. *Wyoming*, 325 U. S. 589	26, 53, 68
Oklahoma v. *Civil Service Comm.*, 330 U. S. 127	51
Olson v. *United States*, 292 U. S. 246	59
Public Utilities Commission of the State of California v. *United States*, No. 23, this Term, decided March 3, 1958	26, 53
Salvatore v. *Fuscellaro*, 53 R. I. 271, 166 Atl. 26	58
Standard Oil Co. v. *Johnson*, 316 U. S. 481	53
Starr v. *Nashville Housing Authority*, 145 F. Supp. 498, affirmed *per curiam*, *Starr* v. *Nashville Housing Authority*, 354 U. S. 916	52
State v. *School District No. 1*, 79 Mo. App. 103	58
Steele v. *Louisville & Nashville R. Co.*, 323 U. S. 192	34
Steward Machine Co. v. *Davis*, 301 U. S. 548	52
Summers v. *Sullivan*, 39 Mont. 42, 101 Pac. 166	58
Swayne & Hoyt, Ltd. v. *United States*, 300 U. S. 297	42
Sweezy v. *New Hampshire*, 354 U. S. 234	32
T. V. A., United States ex rel. v. *Powelson*, 319 U. S. 266	59
Truman Fertilizer Co. v. *Larson*, 196 F. 2d 910	30
United States v. *Ahtanum Irrigation District*, 236 F. 2d 321, certiorari denied, 352 U. S. 988	68
United States v. *Bekins*, 304 U. S. 27	52
United States v. *Borden Co.*, 308 U. S. 188	38
United States v. *Burnison*, 339 U. S. 87	66
United States v. *Butler*, 297 U. S. 1	50
United States v. *California*, 332 U. S. 19	51
United States v. *Carmack*, 329 U. S. 230	56
United States v. *Catlin*, 204 F. 2d 661	59
United States v. *Chandler-Dunbar Co.*, 229 U. S. 53	59
United States v. *Cors*, 337 U. S. 325	58
United States v. *Foster*, 131 F. 2d 3, certiorari denied, 318 U. S. 767	59
United States v. *Gerlach Live Stock Co.*, 339 U. S. 725	8; 11, 12, 25, 34, 35, 37, 42, 49, 50, 57, 62, 67
United States v. *Lambert*, 146 F. 2d 469	59
United States v. *Miller*, 317 U. S. 369	15, 58

Cases—Continued

Page

United States v. *1,119.15 Acres of Land*, 44 F. Supp. 449 58
United States v. *Rayne*, 136 F. 2d 376 59
United States v. *Rio Grande Irrigation Co.*, 174 U. S. 690 68
United States v. *San Francisco*, 310 U. S. 16 51
United States v. *2,086 Acres of Land*, 46 F. Supp. 411 58
United States v. *2,184.81 Acres of Land*, 45 F. Supp. 681 58
United States v. *Walker River Irrigation District*, 104 F. 2d 334 68
Wheeler v. *Kirtland*, 27 N. J. Eq. 534 58
Wickard v. *Filburn*, 317 U. S. 111 55
Winters v. *United States*, 207 U. S. 564 68
Woodville v. *United States*, 152 F. 2d 735, certiorari denied, 328 U. S. 842 58

Constitution and Statutes:

U. S. Constitution:
Article I, Section 8 50
Article IV, Section 3 ..... 25, 50
Article VI 53
Desert Land Act of 1877, 19 Stat. 377 ..... 68, 69
Reclamation Act of June 17, 1902, 32 Stat. 388:
Section 5, 43 U. S. C. 431 ..... 3, 24, 36, 38, 64
Section 6, 43 U. S. C. 491, 498 ..... 3, 50, 62
Section 7, 43 U. S. C. 421 57
Section 8, 43 U. S. C. 372, 383 ..... 4, 19, 22, 24, 34, 35, 37, 38
Act of February 21, 1911, 36 Stat. 925; 43 U. S. C. 523 37
Act of August 9, 1912, Sec. 3, 37 Stat. 266, 43 U. S. C. 543 36
Reclamation Extension Act of August 13, 1914, 38 Stat. 689, Secs. 12 and 13, 43 U. S. C. 418, 435, 443 37
Act of May 15, 1922, 42 Stat. 541, 43 U. S. C. 511, 512:
Section 1 30
Section 2 64
Omnibus Adjustment Act of May 25, 1926, 44 Stat. 649, Section 46, 43 U. S. C. 423e 5, 24, 28, 30, 32, 33, 35, 37, 38, 58

Constitution and Statutes—Continued Page

Act of August 30, 1935, 49 Stat. 1028 10
Rivers and Harbors Act of August 26, 1937, 50 Stat. 844, Section 2 ..... 10, 57
Reclamation Project Act of 1939, 53 Stat. 1187, 1195, 43 U. S. C. 485 (h):
Section 9 (c) 24, 32, 44, 45
Section 9 (d) 43
Section 9 (e) 6, 7, 24, 32, 43, 45, 46, 47
Rivers and Harbors Act of October 17, 1940, 54 Stat. 1198 10
Columbia Basin Project Act, 57 Stat. 14 37
Act of June 29, 1948, 62 Stat. 1112 13
Act of October 14, 1949, 63 Stat. 852 11
Act of September 26, 1950, 64 Stat. 1036 11
Act of September 3, 1954, 68 Stat. 1190 41
Act of August 12, 1955, 69 Stat. 719 11
Act of July 2, 1956, 70 Stat. 484, Section 4, 43 U. S. C. 485h (1–4) 47, 48
Act of September 2, 1957, 70 Stat. 590 37
23 U. S. C. 24a 51
23 U. S. C., Supp. IV, 63 51
23 U. S. C., Supp. IV, 158 (i) 51
23 U. S. C., Supp. IV, 158 (j) 51
28 U. S. C. 1257 (1) 23, 24, 32
28 U. S. C. 1257 (3) 24, 32
28 U. S. C. 1391 (b) 30
28 U. S. C. 2103 32
California Water Code:
Sec. 22250 35
Sec. 23195 33
Sec. 23197 33
Sec. 23200 33
Sec. 23225 16
Sec. 23250 35
Congressional Material:
Hearings before Subcommittee of House Committee on Appropriations on H. R. 3123, 80th Cong., 1st Sess. 45, 46, 48, 64
H. Doc. 53, 83rd Cong., 1st Sess. 11, 44
H. Doc. 73, 83rd Cong., 1st Sess. 11
H. Doc. 146, 80th Cong., 1st Sess. 11, 45

Congressional Material—Continued Page

H. Doc. 367, 81st Cong. 11

H. Doc. 416, 84th Cong., 2d Sess. 9, 10, 11, 38, 44, 45, 55, 59, 61, 68

H. Doc. 587, 80th Cong., 2d Sess. 12, 13, 17, 18, 40, 46, 47

H. Rept. No. 662, 67th Cong., 2d Sess. 30

H. Rept. No. 3123, 80th Cong., 1st Sess. 45

H. Rept. No. 1098, 83d Cong., 2d Sess. 41

S. Doc. 113, 81st Cong. 11, 13

S. Rept. No. 2241, June 18, 1956 (to accompany H. R. 101), 84th Cong., 2d Sess., 2 U. S. Code Cong. and Admin. News, 1956 47

90 Cong Rec. 9493–9499 39

100 Cong. Rec. 1145–1146, 14250, 15008 41

100 Cong. Rec. 1150 41–42

102 Cong. Rec. 2902 48

102 Cong. Rec. 10635 48

Miscellaneous:

Annual Reports, Secretary of the Interior:

1946 39, 44, 45

1947 39

1950 40

1951 40

Comment, 34 Mich. L. Rev. 530 58

Marquis, *Constitutional and Statutory Authority to Condemn*, 43 Iowa L. Rev. No. 2, 170–190 56

Stoyles, *Condemnation of Future Interests*, 43 Iowa L. Rev. 241 58

Taylor, *The Excess Land Law: Execution of a Public Policy*, 64 Yale L. J. 477 36

In the Supreme Court of the United States

OCTOBER TERM 1957

No. 122

THE IVANHOE IRRIGATION DISTRICT AND THE STATE OF CALIFORNIA, APPELLANTS

v.

COURTNEY MCCRACKEN, ET AL.

No. 123

THE MADERA IRRIGATION DISTRICT AND THE STATE OF CALIFORNIA, APPELLANTS

v.

CARL F. STEINER, ET AL.

No. 124

THE MADERA IRRIGATION DISTRICT, APPELLANT

v.

PHILLIP AND JANE E. ALBONICO

No. 125

THE SANTA BARBARA COUNTY WATER AGENCY, APPELLANT

v.

MAURICE A. BALAAM, ET AL.

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The opinions of the Supreme Court of California are reported in 47 Cal. 2d commencing at p. 597, 306 P. 2d 824. These opinions as well as those of the California trial courts are printed in a separate appendix to the Jurisdictional Statement (hereafter referred to as "AJS").

JURISDICTION

The opinions of the Supreme Court of California were filed January 24, 1957 (AJS 1, 139, 180, 205). Petitions for rehearing were denied on February 19, 1957, and notices of appeal to this Court were filed in time (R. 177–181, 398–402, 422–425, 650–655). Jurisdiction of this Court is invoked under 28 U. S. C. 1257 (1). By order of October 14, 1957, 355 U. S. 803, further consideration of the question of jurisdiction was postponed to the hearing of the cases on the merits (R. 656).

QUESTIONS PRESENTED

The California Supreme Court has refused to validate contracts between the United States and two California irrigation districts and a special state agency because they limit the quantity of water to be delivered from the project to owners of land in excess of 160 acres and because of stated objections to the contract provisions with respect to repayment of money spent by the United States in construction of dams, reservoirs, and other facilities for the Central Valley Project and the Santa Barbara County Project. The questions presented are:

1. Whether the decisions of the California Supreme Court rest on federal grounds, and not on an adequate state ground.

2. Whether the federal reclamation laws authorize the inclusion of the disputed requirements in the contracts.

3. Whether, regardless of the provisions of California law, Congress could constitutionally make such regulations for the distribution of water and the repayment of capital expenditures.

STATUTES INVOLVED

The basic federal and state statutes involved in this case are printed in the appendices to the Jurisdictional Statement (AJS) at pages 235–260, and in the appendix to the appellants' brief (pp. 93–120). We reprint here only:

Section 5 of the Reclamation Act of 1902 (32 Stat. 389, 43 U. S. C. 431):

> * * * No right to the use of water for land in private ownership shall be sold for a tract exceeding one hundred and sixty acres to any one landowner, and no such sale shall be made to any landowner unless he be an actual bona fide resident on such land, or occupant thereof residing in the neighborhood of said land, and no such right shall permanently attach until all payments therefor are made. * * *

Section 6 of the Reclamation Act of 1902 (32 Stat. 389, 43 U. S. C. 491, 498):

> That the Secretary of the Interior is hereby authorized and directed to use the reclamation fund for the operation and maintenance of all

reservoirs and irrigation works constructed under the provisions of this Act: *Provided,* That when the payments required by this Act are made for the major portion of the lands irrigated from the waters of any of the works herein provided for, then the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby, to be maintained at their expense under such form of organization and under such rules and regulations as may be acceptable to the Secretary of the Interior: *Provided,* That the title to and the management and operation of the reservoirs and the works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress.

Section 8 of the Reclamation Act of 1902 (32 Stat. 390, 43 U. S. C. 372, 383):

That nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this Act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: *Provided,* That the right to the use of water acquired under the provisions of this Act shall be appurtenant to the land irrigated,

and beneficial use shall be the basis, the measure, and the limit of the right.

Section 46 of the Omnibus Adjustment Act of 1926 (44 Stat. 649, 43 U. S. C. 423e):

> No water shall be delivered upon the completion of any new project or new division of a project until a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or irrigation districts organized under State law providing for payment by the district or districts of the cost of constructing, operating, and maintaining the works during the time they are in control of the United States, such cost of constructing to be repaid within such terms of years as the Secretary may find to be necessary, in any event not more than forty years from the date of public notice hereinafter referred to, and the execution of said contract or contracts shall have been confirmed by a decree of a court of competent jurisdiction. Prior to or in connection with the settlement and development of each of these projects, the Secretary of the Interior is authorized in his discretion to enter into agreement with the proper authorities of the State or States wherein said projects or divisions are located whereby such State or States shall cooperate with the United States in promoting the settlement of the projects or divisions after completion and in the securing and selecting of settlers. Such contract or contracts with irrigation districts hereinbefore referred to shall further provide that all irrigable land held in private ownership by any one owner in excess of one hundred and sixty irrigable acres shall be appraised in a

manner to be prescribed by the Secretary of the Interior and the sale prices thereof fixed by the Secretary on the basis of its actual bona fide value of the date of appraisal without reference to the proposed construction of the irrigation works; and that no such excess lands so held shall receive water from any project or division if the owners thereof shall refuse to execute valid recordable contracts for the sale of such lands under terms and conditions satisfactory to the Secretary of the Interior and at prices not to exceed those fixed by the Secretary of the Interior; and that until one-half the construction charges against said lands shall have been fully paid no sale of any such lands shall carry the right to receive water unless and until the purchase price involved in such sale is approved by the Secretary of the Interior and that upon proof of fraudulent representation as to the true consideration involved in such sales the Secretary of the Interior is authorized to cancel the water right attaching to the land involved in such fraudulent sales: *Provided further*, That the operation and maintenance charges on account of lands in said projects and divisions shall be paid annually in advance not later than March 1. It shall be the duty of the Secretary of the Interior to give public notice when water is actually available, and the operation and maintenance charges payable to the United States for the first year after such public notice shall be transferred to and paid as a part of the construction payment.

Section 9 (e) of the Reclamation Project Act of 1939 (53 Stat. 1196, 43 U. S. C. 485h (e)):

In lieu of entering into a repayment contract pursuant to the provisions of subsection (d) of this section to cover that part of the cost of the construction of works connected with water supply and allocated to irrigation, the Secretary, in his discretion, may enter into either short- or long-term contracts to furnish water for irrigation purposes. Each such contract shall be for such period, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, due consideration being given to that part of the cost of construction of works connected with water supply and allocated to irrigation; and shall require payment of said rates each year in advance of delivery of water for said year. In the event such contracts are made for furnishing water for irrigation purposes, the costs of any irrigation water distribution works constructed by the United States in connection with the new project, new division of a project, or supplemental works on a project, shall be covered by a repayment contract entered into pursuant to said subsection (d).

STATEMENT

These four cases present issues which are basic to the administration of the federal reclamation laws in California and in other western states, especially in regard to the excess lands laws—the so-called "160 acre" law—and the repayment provision under a 1939 statute—the so-called "9 (e)" provisions. The

acts of the cases and the proceedings below may be riefly summarized as follows:

1. *The Central Valley Project:*—Mr. Justice ackson, speaking for the Court in *United States . Gerlach Live Stock Company,* 339 U. S. 725, 728–29, described this development as follows:

> This is a gigantic undertaking to redistribute the principal fresh-water resources of California. Central Valley is a vast basin, stretching over 400 miles on its polar axis and a hundred in width in the heart of California. Bounded by the Sierra Nevada on the east and by coastal ranges on the west, it consists actually of two separate river valleys which merge in a single pass to the sea at the Golden Gate. Its rich acres, counted in the millions, are deficient in rainfall and must remain generally arid and unfruitful unless artificially watered.
>
> Water resources there are, if they can be captured and distributed over the land. From the highland barricade at the north the Sacramento River flows southerly, while from the Yosemite region at the southeast the San Joaquin River winds northeasterly until the two meet and consort in outlet to the sea through estuaries that connect with San Francisco Bay. These dominating rivers collect tribute from many mountain currents, carry their hoardings past parched plains and thriftlessly dissipate them in the Pacific tides. When it is sought to make these streams yield their wasting treasures to the lands they traverse, men are confronted with a paradox of nature; for the Sacramento, with almost twice the water, is accessible to the least land, whereas

about three-fifths of the valley lies in the domain of the less affluent San Joaquin.

To harness these wasting waters, overcome this perversity of nature and make water available where it would be of greatest service, the State of California proposed to re-engineer its natural water distribution. This project was taken over by the United States in 1935 and has since been a federal enterprise. The plan, in broad outline, is to capture and store waters of both rivers and many of their tributaries in their highland basins, in some cases taking advantage of the resulting head for generation of electric energy. Shasta Dam in the north will produce power for use throughout much of the State and will provide a great reservoir to equalize seasonal flows of the Sacramento. A more dramatic feature of the plan is the water storage and irrigation system at the other end of the valley. There the waters of the San Joaquin will be arrested at Friant, where they would take leave of the mountains, and will be diverted north and south through a system of canals and sold to irrigate more than a million acres of land, some as far as 160 miles away. A cost of refreshing this great expanse of semiarid land is that, except for occasional spills, only a dry river bed will cross the plain below the dam. Here, however, surplus waters from the north are utilized, for through a 150-mile canal Sacramento water is to be pumped to the cultivated lands formerly dependent on the San Joaquin.

In H. Doc. 416, 84th Cong., 2d Sess., entitled "Central Valley Project Documents," there is collected

in Part I of some 1,100 pages excerpts from the basic statutes, reports, etc., State and Federal, under which this Project was engineered, authorized and built. These materials trace the history of the early federal and state statutes and the various state activities which culminated in the 1933 Central Valley Project Act by which California authorized the project and created the Water Project Authority to construct it, H. Doc. 416, pp. 409–431. A federal contribution of $12,000,000 for what is now Shasta Dam, one of the key structures of the project, was authorized by the Act of August 30, 1935, 49 Stat. 1028, 1038. H. Doc. 416, p. 558. In 1935 state agencies were authorized to seek federal aid for the project, which was estimated to cost $170,000,000; it being stated, *inter alia*, "said project cannot be constructed at this time without such federal aid and assistance." Two bills were introduced in Congress to this end (H. Doc. 416, pp. 555–558). A total of $20,000,000 was allocated from emergency relief funds in 1935 for the Bureau of Reclamation, primarily to develop Friant Dam (H. Doc. 416, pp. 559–562). By the Rivers and Harbors Act of 1937, 50 Stat. 844, 850, the project was reauthorized as a federal reclamation project and execution of the plan proceeded. (See H. Doc. 416, p. 501.).

In the Rivers and Harbors Act of October 17, 1940, 54 Stat. 1198, the 1937 authorization of the Central Valley Project was amended so that—after the declaration of purposes to improve navigation, regulate river flow, prevent floods—it stated, "providing for storage and for the delivery of the stored waters thereof, for construction under the provisions of the Federal recla-

mation laws of such distribution systems as the Secretary of the Interior deems necessary in connection with lands for which said stored waters are to be delivered * * *," H. Doc. 416, pp. 571–572. Additional units have been added to the project from time to time pursuant to statutes which in some cases reauthorized the project. See Act of October 14, 1949, 63 Stat. 852; H. Doc. 416, pp. 620–622; Act of September 26, 1950, 64 Stat. 1036; and Act of August 12, 1955, 69 Stat. 719; H. Doc. 416, pp. 937–940.

In 1947, the Secretary of the Interior transmitted to Congress a finding of feasibility and allocation of costs which showed an estimated cost of $384,314,000, of which $199,661,000 was allocated to be reimbursable from irrigation. H. Doc. 146, 80th Cong.; H. Doc. 416, pp. 574–601. This was increased first to $682,146,000 (H. Doc. 73, 83rd Cong., 1st Sess.; H. Doc. 416, p. 649), and then to $828,744,000. H. Doc. 53, 83rd Cong., 1st Sess.; H. Doc. 416, pp. 849–871. This is the project concerned in cases No. 122, 123, and 124.[1]

As stated in *United States* v. *Gerlach Live Stock Company*, 339 U. S. 725, in the execution of the project respect has been given to appropriative, prescriptive or riparian rights valid under state law. In 1938 and 1939, the State Director of Finance executed two assignments to the United States of applications to

[1] A more comprehensive plan for development of the Central Valley basin prepared by the Bureau of Reclamation was submitted to Congress in 1948 (S. Doc. 113, 81st Cong.) as was a comparable report by the Chief of Engineers. (H. Doc. 367, 81st Cong.; H. Doc. 416, pp. 963-1111.) Neither of these plans, both of much broader scope than the Central Valley Project, have been approved by Congress.

appropriate unappropriated waters of the Sacramento and San Joaquin Rivers (R. 88–95). The United States purchased the rights of the Madera Irrigation District, owner of the Friant Dam site (see *infra*, p. 17), and the rights of many private persons or organizations (such as Miller & Lux) have been purchased. See *United States* v. *Gerlach Live Stock Co.*, 339 U. S. 725, 735, 741; R. 130–131. As in the *Gerlach* case, rights are being acquired by the exercise of eminent domain. Also, the United States has made filings of its own to appropriate waters.

2. *The Cachuma Unit of the Santa Barbara County Project*:—This is the project involved in case No. 125. It is completely separate from and unrelated to the Central Valley Project. It is a project to supply water for irrigation and municipal uses along the south coast area of Santa Barbara County. The principal features are a dam on the Santa Ynez river, creating the Cachuma Reservoir, the Tecolote tunnel to deliver water across the coastal mountains to the coastal plain, and lateral distribution systems in Goleta and Carpinteria County water districts (H. Doc. 587, 80th Cong., 2d Sess., p. VII). In recommending immediate authorization of the project, the State Division of Water Resources stated (H. Doc. 587, p. 10) that "There is an urgent and immediate need for substantial supplemental municipal and irrigation water supplies for the south coast area of Santa Barbara County, including the city of Santa Barbara, and the lands and developments in the three county water districts; namely, Montecito, Goleta, and Carpinteria, and also there is demand for additional supply of

water in the Santa Ynez River Water Conservation District. The city of Santa Barbara has a critical water situation at this time." As to the beneficiaries other than the city of Santa Barbara, it was stated (H. Doc. 587, p. 10): "The underground water supplies in the county water districts are being seriously overdrawn. In some localities the pumping water levels in wells are being lowered to a point which is resulting in excessive costs and in other localities the wells are being damaged by salt water intrusion. Supplemental supplies are needed to replenish these ground water basins." An appropriation of $1,000,000 for this project was included in the Act of June 29, 1948, 62 Stat. 1112, 1126.

3. *The Ivanhoe District and Its Contract:*—The Ivanhoe Irrigation District, located south of the Friant Dam, was organized in 1948 for the purpose of securing, from the Central Valley Project, a supplemental supply of water for lands within its boundaries (R. 114, 116). The gross area of the district is 11,117 acres, of which 9,968 acres are suitable for irrigation (R. 120). Of that area, 8,865 acres had been irrigated by a system of private pumps and ditches of the owners from underground water supplies (R. 116, 121). In the area, the available surface and underground supplies were gradually being seriously reduced and were in need of replenishment (R. 116). These are the circumstances under which the contract with Ivanhoe was executed.

The contract provides for two separate matters. Part A, consisting of Articles 10–17 (R. 17–25), is the so-called "9 (e)" contract whereby provision is

made for the delivery to the District of designated amounts of water from the Friant Dam through the Friant-Kern Canal. This water is to be paid for at no more than stipulated amounts (R. 19). Provision is made for operating details, exceptions in case of water shortage and similar matters (R. 19–25). Part A of the contract is for a term of forty years (R. 17).

Part B of the contract relates to construction by the United States of a system of distribution and lateral works within the District, to a stated maximum amount of money. This construction obligation is to be repaid without interest in 40 annual installments commencing two years after a described development period ends (R. 25–27). This is generally referred to as the "9 (d)" contract.

Articles 25–43 contain various general provisions, many of them designed to protect the interest of the United States in its capital investment, and Article 33 (R. 36) provides that title to all works including the distribution system shall remain in the name of the United States until otherwise provided by Congress. There follow Articles 35–37 which constitute the "excess lands" provisions. Generally speaking, "excess land" is defined as irrigable land exceeding 160 acres in ownership of a single person or 320 acres held by husband and wife, and "large landowner" is defined as the owner of excess land (R. 38). Ignoring, for simplicity, details relating to enforcement, prevention of fraud, etc., the contract provides that water under the contract (*i. e.*, Central Valley Project water) shall not be furnished excess land unless the owner agrees to execute a sales contract agreeing to dispose of his

excess lands under stated conditions (R. 36).[2] Throughout these provisions, the reference is to "water or service made available pursuant to this contract" (R. 36) or to "Project water" (R. 37), thus making it clear that the pre-existing rights of landowners within the Ivanhoe District to their existing water supply by pumping is unaffected. The value of excess lands under the contract is to be determined by three appraisers under principles that exclude value because of the possibility of securing water from the distribution system[3] and the value of improvement is to be included but separately stated. The contract provides for sale at the appraised price of the excess lands to persons who can take title as non-excess landholders,

[2] On the authority of a general statement purporting to describe administrative procedure, the majority opinion below states that all water will be refused to the large landowner even for his first 160 acres until he executes a contract (AJS 46). The Ivanhoe contract contains no such provision. As Chief Justice Gibson, dissenting, said (AJS 65–66), the large landowner "may retain all his land, receiving federal project water for the first 160 acres and irrigating the remainder with whatever other water may be available."

[3] The majority of the court below erred in saying that the appraisal excludes any increase in value because of increase in population, an extraordinary increase in productivity, or increase because of the discovery of oil or other valuable substances beneath the land (AJS 45–46). Increases in value from such causes are not excluded; only the single element of enhancement due to the Government's project is excluded. This is not unlike the rule of *United States* v. *Miller*, 317 U. S. 369. Recognition that values may properly change for reasons unconnected with the project is shown by the contract provision that the cost of the first two appraisals and each subsequent appraisal requested by the United States will be paid by the United States (R. 38). Successive appraisals would be required only because values change.

i. e. who will own less than 160 acres; if single, or 320 acres, if married (R. 38, 39). The contract further provides for designation of which particular 160 acres or 320 acres shall be considered as non-excess and the District will be bound to furnish water only to the land so designated as non-excess (R. 39–40).

Finally, the contract provides that the District will prosecute in the appropriate State court a proceeding for judicial confirmation of the proceedings for organization of the District, its proceedings for execution of the contract, and the validity of the provisions of the contract as provided in Section 23225 of the California Water Code (AJS 252); and the contract shall not bind the United States until such confirmation is had (R. 41–42).

4. *The Madera District and Its Contract:*—The Madera Irrigation District was organized in 1920 (R. 300). Its gross area is 112,000 acres, of which 94,000 acres are suitable for cultivation (R. 300). Prior to the Central Valley Project, some 85,000 acres had been irrigated by pumps of the individual owners and a part of the area was served by a private ditch company called the Emmert System (R. 300). This system was purchased by the Madera District in 1949 (R. 301).

The District owned the site where Friant Dam has been built and had made filings to appropriate, by a dam, water of the San Joaquin at that site in order to secure a supplemental water supply. In 1939, the United States bought these properties for $300,000, the agreement being that the Madera District would receive its supplemental supply from the Madera

Canal when Friant was constructed (R. 220–232). This contract provided that the District agreed "to grant, bargain, sell, convey and confirm unto the United States, its successors and assigns forever, free of lien or encumbrance, all the following described property and rights: * * *". There follows a heading "Real Property" under which are particularly described (*a*) the dam site and (*b*) some 190 acres of gravel land. Then under a heading "Water Rights" are described rights by appropriation, prescription and riparian ownerships and the rights under the filings for Friant dam site (R. 223–225).

The Madera contract, so far as present issues are concerned, is identical with the Ivanhoe contract. It provides in Part A for delivery of water at rates not to exceed stated amounts (R. 188–202); Part B is a contract, like Ivanhoe's, for construction of a distribution system (R. 202–209). The contract contains the same provisions as to title to works, excess lands, and court confirmation (R. 212–219).

5. *The Santa Barbara Agency and Its Contract:*— The Santa Barbara County Water Agency is not an irrigation district but is an agency which was created by the State to carry out the comprehensive plan for Santa Barbara County described in H. Doc. 587, 80th Cong., 2d Sess., *supra*, p. 12. In recommending the project, the federal Commissioner of Reclamation pointed out that "The county has already secured enabling legislation which will permit the county to enter into contracts with the United States to carry out the plan of development and to enter into

contracts for the return of the reimbursable costs of the project works to the United States" (H. Doc. 587, 80th Cong., 2d sess., p. 22; see also pp. 37, 60–61, 66). The Agency, whose boundaries are coextensive with the county, did contract with the United States for delivery of the water which it, in turn, would contract to deliver to member units within its boundaries, which are composed of the City of Santa Barbara and four irrigation districts, Carpenteria, Goleta, Montecito and Summerland. The master contract between the Agency and the United States dated September 12, 1949, is identical for present purposes with the Ivanhoe contract, excluding Part B thereof. The amount of water is allocated among the five members, and temporary sale of surplus waters is provided for with the stipulation that revenues therefrom "in excess of the costs of operation and maintenance from the sale of all such surplus water shall be credited to the construction cost of the Cachuma Unit" (R. 484). The contract contains the same provisions as does the Ivanhoe contract as to the excess land laws (which are required to be included in each contract between the Agency and its members) and court confirmation (R. 497–504). A special provision "subject to agreement or the power of the United States of eminent domain" recognizes and preserves existing water rights of member units (R. 502–503). A month after the contract was executed, there was signed the Interior Department's Appropriation bill for the fiscal year 1950 which, *inter alia,* appropriated $5,185,000 for the project, referring to the contract specifically.

6. *The Ivanhoe Litigation in the Trial Court:*— Case No. 122 was instituted by the Irrigation District in the appropriate California Superior Court for confirmation of the organization of the District and the contract, as required by the reclamation laws and the contract. Courtney McCracken, a single man who owns more than 160 acres (*i. e.*, 309 acres) within the District (R. 153–155), challenged the validity of the contract by demurrer (R. 43–45) and by answer (R. 65–76) on a large number of grounds. The State of California originally made similar challenges by demurrer and answer (R. 50–65), but an amended answer of the State alleged that the contract was valid. Regional counsel for the Bureau of Reclamation appeared as *amici curiae* by leave of court (R. 112).

The trial court held that both the contract itself and the proceedings leading to its execution were invalid. Its theory, as shown by its opinion (AJS 113–135), its findings of fact (R. 114–158), and its conclusions of law (R. 158–175), may be summarily stated as follows: Section 8 of the Reclamation Law of 1902 submits all rights of the United States to State law, so that "in so far as the Central Valley Project is concerned whenever there is a conflict between the Federal Reclamation laws and the laws of the State, the law of California must prevail" (AJS 120; see also R. 138–139, 170); that by laws is meant "Constitution, statutes, rules and regulations and court and administrative decisions of this State" (R. 159); and that "The United States is and shall be subject to the jurisdiction and direction of the State

Engineer of the State of California * * * " (R. 165; see also R. 139, 161–162). The court then ruled that, under the circumstances of the origin, etc., of the Central Valley Project, the United States was trustee of an express trust of which the beneficiaries are the "beneficiaries of said [Central Valley] Project" including the Ivanhoe Irrigation District (R. 128–129, 137–138). All applications to appropriate unappropriated water whether made by the United States or acquired from others, including the State, are, the court declared, held in such a trust and the beneficiaries have an "incomplete, incipient and conditional right in the water applied for" which is a vested interest in real property (R. 127–128). The court held that the excess land provision as well as other provisions of the contract are invalid and unenforceable because they conflict with State law (R. 167–168) and because they are not authorized by but are contrary to the Reclamation Act (R. 170–173). The court also ruled that to attempt to apply the excess land provisions to McCracken would be unconstitutional (R. 172–173).

7. *The Madera Litigation in the Trial Court:*—Case No. 123 is a proceeding to confirm the contract which was heard by the same judge who decided the *Ivanhoe* case and adopted his opinion for the *Madera* case (AJS 156). The findings of fact and conclusions of law are therefore substantially the same as those in the *Ivanhoe* case (R. 297–379).

The Madera Irrigation District v. *Phillip and Jane E. Albonico,* No. 124, is a suit brought by owners of excess land to secure a mandatory order to compel

exclusion from the District of their lands in excess of 320 acres on the ground they would receive no benefit from the project (R. 403–407). The court held the excess lands provisions to be unconstitutional and made an alternative judgment that, if the excess land provisions were attempted to be applied, the excess lands should be excluded; or, if not applied, the mandatory order should be denied (R. 416–419).

8. *The Santa Barbara Litigation in the Trial Court:*—The *Santa Barbara case*, No. 125, was also a confirmation proceeding before a different trial court. Here, however, the court granted confirmation, holding the contract valid in every respect. It also held that the Master Contract was ratified and confirmed by the federal Appropriation Act cited above which specifically referred to the contract (*supra*, p. 18).

9. *The Decisions of the Supreme Court of California.*—On appeal, all of the contracts were held to be invalid in 4–3 decisions by the Supreme Court of California. The principal opinions were written in the *Ivanhoe* case. The majority held the excess land law to be inapplicable, one reason being that, if applicable, it would be unconstitutional (AJS 40–52). This view is based on a trust theory which is not the same as that espoused by the trial court in the *Ivanhoe* and *Madera* cases. Although much is made of the history of the Central Valley Project (AJS 12–22), the trust apparently is thought to arise out of California water law and to impose on irrigation districts and the State a trust for the benefit of the water users of the State (AJS 22–31). When the United States steps into the

shoes of the State to administer the trust, it is subject to the same restrictions as would be the State, the court held.

The *Ivanhoe* majority opinion invalidating the "9 (e)" provisions concluded that the contract must provide for repayment of a stated amount within 40 years, for transfer of title to the District upon repayment, and that a permanent right to receive water is vested in the District and its members (AJS 39–40, 63–64). These consequences apparently follow from the court's conclusion that the contract creates a "Debtor-Creditor" relationship, that the United States is acting as a public utility in a proprietary capacity, and that under Section 8 of the Reclamation Act controlling state law requires a utility to conform to certain rules and regulations (AJS 37, 55–56). Two vigorous dissenting opinions were filed (AJS 64–112).

In the *Madera* case, the same ruling was made as to the excess land provisions and repayment provisions, but several other provisions were held valid (AJS 154). In the *Albonico* case, the court held that, since the excess land provisions could not be included in the contract, the alternative of exclusion from the District should be stricken from the judgment (AJS 180–183). The *Santa Barbara* judgment was reversed because of inapplicability of the excess land provisions and insufficiency of the repayment provisions, while other attacks under State law upon the validity of the Agency were rejected (AJS 213–220). The three judges who dissented in the *Ivanhoe* case noted the same dissents in these three cases.

SUMMARY OF ARGUMENT

I

The United States, as one of the contracting parties, has a direct interest in establishing the validity of the contracts with the state irrigation districts. Since judicial confirmation of the contracts is by federal law a prerequisite to delivery of project water, the judgments below are a serious impediment to the successful operation of the largest reclamation project ever undertaken by the Federal Government.

Although the United States is thus concerned with the outcome of these particular cases, it is not bound by the determinations of the California courts with respect to its rights and powers, even in California. The United States was not a party to the proceedings and its rights may not be tried behind its back. *Leiter Minerals, Inc.* v. *United States,* 352 U. S. 220. Congress has not consented that the United States be sued, and therefore the United States will be free to assert its rights in spite of the decision in these cases.

II

Jurisdiction in this Court was asserted pursuant to 28 U. S. C. 1257 (1). This Court postponed consideration of jurisdiction to the hearing on the merits. 335 U. S. 803.

Jurisdiction under 1257 (1) of the Judicial Code rests upon whether the state court held invalid a federal statute. In their brief, appellants analyze the opinions to show that this is the basis of the court's decisions. App. Br., pp. 28–42. We do not repeat

this argument, since, even if it should be held that jurisdiction should not be taken under Section 1257 (1), we believe the Court should treat the appeals as petitions for certiorari and grant review under 28 U. S. C. 1257 (3) on the ground that the opinions below rest on a construction of federal statutes.

Specifically, the California Supreme Court held that the conditions in the contracts were invalid under *federal* law. It did not hold that the state irrigation districts were without authority under state law to enter into the contracts and receive the water; rather, it held that the Bureau of Reclamation is without authority under federal law to condition the receipt of the water on the acreage limitation and the repayment provisions written into the contracts.

III

The provisions of the contracts held invalid were those imposing a 160-acre limitation on the delivery of water from the project to land held by a single individual, and the sections dealing with repayment of the portion of the federal expenditures made to promote irrigation. The United States believes that these provisions are authorized by Section 5 of the Reclamation Act of 1902, Section 46 of the Omnibus Adjustment Act of 1926, and by Sections 9 (c) and 9 (e) of the Reclamation Project Act of 1939. These sections contemplate and make specific provision for those conditions in the contracts and therefore take precedence over Section 8 of the Reclamation Act of 1902, which requires conformity to state law in some particulars—even if Section 8, by itself and without

more, would support the holding below. Any possible doubt as to the correctness of this construction is eliminated by the fact that Congress has repeatedly reaffirmed the authority of the Bureau of Reclamation to include these provisions in the contracts, and has done so with respect to these particular projects with these particular types of contracts in mind. In fact, several attempts to eliminate the 160-acre limitation with respect to the Central Valley Project have been rejected. Clearly, Congress has over the years authorized the inclusion of the disputed provisions.

IV

The Federal Government has constitutional power to impose these disputed contractual requirements.

A. In the first place, there can be no doubt that the United States may validly undertake reclamation projects such as the Central Valley and Santa Barbara projects. These undertakings are authorized by the "general welfare" clause of Article I, Section 8 of the Constitution (*United States* v. *Gerlach Live Stock Co.*, 339 U. S. 725, 738–739), and in connection with such projects the United States may acquire and maintain federal structures and property.

B. It is likewise settled that the Federal Government may impose reasonable conditions on the use of federal property, and the receipt of federal monies or bounties; under its power to control and dispose of federal property (Article IV, Section 3 of the Constitution), Congress has the right to determine how such property shall be administered. See *e. g.*, *Federal Power Commission* v. *Idaho Power Co.*, 344 U. S. 17,

21. And once Congress has authorized the imposition of such reasonable conditions on the use of federal property (including money), a state may not *compel* use of the property without such conditions. See *e. g., Public Utilities Commission of the State of California* v. *United States,* No. 23, this Term, decided March 3, 1958; *Nebraska* v. *Wyoming,* 325 U. S. 589, 614–615.

C. The contractual provisions which are challenged in this case are reasonable.

1. Certainly, the 160-acre limitation is reasonable. The erection of the federal facilities and the delivery of project water is a bounty of great value, since a large portion of the cost is being borne by the United States; Congress may limit this bounty to small landowners, so as to spread it among as many persons as possible, and to avoid monopolization. The classification is reasonable and merely establishes an upper limit, per person, upon the federal bounty. In addition, there is no violation of any right to just compensation because, if any compensable property right should be taken in the enforcement of the 160-acre limitation, the United States would owe and be required to pay just compensation. There is, of course, good ground for questioning whether a right of "potential water users of the state" which is "'inchoate and incomplete and subject to defeasance" and "not * * * a vested right * * * in the sense that such right became a part and parcel of the freehold estate" is a compensable property right. In any event, the compensation for any right so uncertain would be

merely nominal, since, under settled law, it would have to be ascertained without reference to enhancement in value due to the federal project.

2. Similarly, the 9 (e) repayment provisions of the contracts are reasonably related to valid objectives of Congress. The power of the United States to plan, establish, and operate its projects includes the authority to fix the period and details of repayment, and to determine the disposition of title. The particular circumstances—including the great difficulties of determining costs in advance—furnish compelling reasons for postponing the ultimate settlement of title and repayment matters. It cannot be assumed that the United States would deal unfairly with the water users, and the latter will be able to take advantage of whatever rights they may have acquired during the course of the 40-year period.

D. Since the challenged contractual provisions may validly be rested both on the power to condition the grant of federal bounty and on the ownership of the project structures and dam site, it is unnecessary to decide issues of title to water rights. Even if the California Supreme Court were correct in its view that the State owns unappropriated water, the Federal Government can validly condition the use of its property on compliance with the reasonable conditions it has required in these contracts. The determination of the nature of, or title to, water rights is therefore wholly unnecessary in this case. We add, however, that we entirely disagree with the ruling of the court below on the ownership of unappropriated water.

ARGUMENT

I

THE INTEREST OF THE UNITED STATES

A. THE UNITED STATES IS VITALLY INTERESTED IN ESTABLISHING THE VALIDITY OF THE CONTRACTS HERE INVOLVED

In the Statement we have traced (*supra*, pp. 8–12) the history and scope of the Central Valley Project, the largest single undertaking pursuant to the federal reclamation program. The project was adopted by the United States at the instance of the State of California, at an estimated cost to the United States of more than $800,000,000.00. An impasse exists at the present time since the United States interprets the federal law as requiring that the excess land provisions and the other questioned provisions apply, while the California Supreme Court has held that contracts so providing are invalid. As emphasized by the brief for the appellants (Br. p. 20), there is no clash here between the United States on the one hand and the legislative and executive branches of the State of California on the other. The impasse and the present situation are the result of the action of the California courts, at the instance of minority parties,[4] in refusing to confirm the execution of the contracts between the United States and the irrigation districts.

Since such confirmation is made a mandatory prerequisite to the delivery of any project water (Sec. 46, Omnibus Adjustment Act, 1926, *supra*, p. 5), it

[4] In each instance, the vote in the irrigation districts was overwhelmingly in favor of the contracts, as the dissenting opinion of Justice Carter points out (AJS 89).

is apparent that a serious interference with the operation of the project results.[5] Moreover, the basis of the decision of the California Supreme Court is a broad one, not keyed to the Central Valley Project alone, as witness the same treatment given to the *Santa Barbara* case. The result is that, under the decisions below, future developments pursuant to the federal reclamation program, as well as the enforcement of the requirements of reclamation law on existing projects, are seriously prejudiced.

B. ALTHOUGH VITALLY INTERESTED IN THE VALIDITY OF THE CONTRACTS, THE UNITED STATES CANNOT BE BOUND BY THE DECISIONS BELOW WITH RESPECT TO ITS OWN LEGAL RIGHTS AND POWERS SINCE IT WAS NOT A PARTY TO THE STATE PROCEEDINGS

The United States was not a party to the proceedings in the California courts, and is not a party here. It was not named as a party in any of the complaints[6] and did not intervene. Nor was any officer or agency of the United States a party to these cases.[7]

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[5] While the execution of other contracts in the Central Valley Project have been judicially confirmed in the lower courts of California, the decision of the State Supreme Court in the present cases, if it stands, necessarily casts a cloud upon all such contracts.

[6] The trial court's finding XXXVIII in the *Madera* case (R. 336) that "the United States is one of the parties defendant described in the caption of plaintiff's complaint herein, in paragraph II of said complaint" is patently erroneous. The United States is there named only as being a party to the contract (R. 182).

[7] In its opinion (AJS 116) the trial court stated that the Secretary of Interior would be bound. The court's reliance on *Ickes* v. *Fox*, 300 U. S. 82, in this connection is misplaced. That was an action instituted against the Secretary as named defend-

Congress has not consented to making the United States a defendant in these proceedings. Under Section 46 of the Omnibus Adjustment Act (*supra*, p. 5), the execution of contracts by the state irrigation districts was required to be judicially confirmed. This provision restates Section 1 of the Act of May 15, 1922 (42 Stat. 541, 43 U. S. C. 511), which provided that "* * * no contract with an irrigation district under this Act shall be binding on the United States until the proceedings on the part of the district for the authorization of the execution of the contract with the United States shall have been confirmed by decree of a court of competent jurisdiction, or pending appellate action if ground for appeal be laid." The purpose of the provision was to protect the United States in relying on the contractual obligation of the irrigation districts to repay the portion of the capital outlay as to which they were bound. H. Rept. No. 662, 67th Cong., 2d Sess., p. 2. But although it was contemplated that judicial confirmation of the execution of the contracts should be a condition precedent to the delivery of water under the projects, Congress nowhere provided that the United States should submit the legality of *its* actions or the extent of *its* rights to the state courts. Therefore, there is no ground for the argument that by the provisions of Section 46 Congress submitted the United States to

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ant in the District of Columbia, the only jurisdiction in which he could be sued. 28 U. S. C. 1391 (b); *Trueman Fertilizer Co.* v. *Larson*, 196 F. 2d 910, 911 (C. A. 5); *Brasier* v. *United States*, 223 F. 2d 762 (C. A. 8), certiorari denied, 350 U. S. 913.

suit.[8] Without such consent, the rights of the United States in its property may not be concluded. See *Leiter Minerals, Inc.* v. *United States*, 352 U. S. 220.

We mention this point because the California courts have purported to pass upon federal powers and federal rights. While we urge this Court to reverse these decisions in order that the confirmation of the execution of the contracts requisite to the operation of the reclamation projects may be obtained under a proper interpretation of the federal law, we reserve the position that the rights of the United States cannot be adjudicated in its absence and that the United States may continue to assert the rights and powers it believes its possesses in spite of the decrees of the California courts.

II

THIS COURT HAS JURISDICTION TO REVIEW THE DECISIONS OF THE CALIFORNIA SUPREME COURT SINCE THEY REST ON FEDERAL GROUNDS

In view of the fact that it is the appellants in this case who have chosen the particular path for invoking the jurisdiction of this Court, it is appropriate that they, rather than the United States as *amicus*, support the jurisdiction of this Court through appeal. California has accepted this burden and has presented a detailed analysis of the opinions below in the light of the jurisdictional requirements of the federal

[8] When the United States has submitted itself to suit with respect to the extent of its rights or powers, it has customarily done so only in the federal courts. Cf. *Minnesota* v. *United States*, 305 U. S. 382, 389.

Judicial Code. Rather than burden the Court with a reiteration of these arguments, we respectfully refer the Court to pages 4 to 8 and 28 to 42 of appellants' brief and restrict our discussion to the basic reasons why the Court should accept jurisdiction.

Although the jurisdiction of the Court has been specifically invoked under 28 U. S. C. 1257 (1) on the ground that Section 46 of the Omnibus Adjustment Act of 1926, *supra*, p. 5, and Sections 9 (c) and 9 (e) of the Reclamation Project Act of 1939 (43 U. S. C. 485h (c) and (e)) were drawn in question and held invalid (Jurisdictional Statement, pp. 19–24), the Court could also take jurisdiction on certiorari if the decisions below were based on the interpretation of federal statutes. 28 U. S. C. 1257 (3). Furthermore, under 28 U. S. C. 2103, if the Court should decide that the issues should be considered under its certiorari power, rather than on appeal, it may treat the appeal as a petition for certiorari. Because of the importance of the federal issues involved in this case, we urge that it would be appropriate so to treat the present appeal in the event the decisions below should be held not to invalidate a federal law. Cf. *Sweezy* v. *New Hampshire*, 354 U. S. 234. Therefore, although we believe that the state decisions do draw into question the validity of federal laws, we shall not press that question since it is clear in any event that federal issues form the sole basis for the rulings, and the Court can and should consider the merits of the dispute under its certiorari jurisdiction, if not on appeal.

The underlying premise of the decisions of the California Supreme Court was that it would be unconstitutional to deprive large owners of land in California of their *pro rata* part of the water resources of the state which were held in trust for them, or to deprive the land owners of the right to the continued use of waters delivered to the irrigation districts by contract after the expiration of the 40 year term specified in the contracts (AJS 46–51, 55–56). The basis for this holding was that the contracts, in their impact on the property rights of landowners in California, deprived them of property without due process of law and likewise denied them equal protection (AJS 48–49, 221). Having adopted this proposition, the California court did *not* hold that the irrigation districts were unauthorized under state law to enter into these contracts; on the contrary, the court recognized that the irrigation districts were given, by state law, the right and power to contract on such terms as were required by applicable federal law and regulations (Cal. Water Code, Secs. 23195, 23197), and that water should be distributed by them "in accordance with the applicable acts of Congress, the rules and regulations of the Secretary of the Interior thereunder, and the provisions of the contract * * *" (Cal. Water Code, Sec. 23200). Rather than basing its decision on lack of authority in the state agencies, the court below held that the contracts were invalid on the ground that the Bureau of Reclamation itself has no constitutional right to require such conditions, since Section 46 of the Omnibus Ad-

justment Act and Section 9 of the Reclamation Project Act of 1939 would be unconstitutional if construed to permit the imposition of such conditions. The result of this approach was that the court did not order the irrigation districts to refuse to accept reclamation water, but instead held that the conditions on the delivery of the water were illegal. If the court had proceeded on a state ground, it would have barred the state agencies from receiving the federal bounty; proceeding, as it did, on the federal ground, the court held them entitled to contract for the water but held the disputed conditions illegal. It thus appears that the California court consciously and purposely rested its decision on a federal ground rather than on an interpretation of its own laws. Under these circumstances, this Court has repeatedly stated that it will not look further to see whether there was an adequate state ground for the decision. *Steele* v. *Louisville & Nashville R. Co.*, 323 U. S. 192, 197 n. 1.; *Indiana ex rel. Anderson* v. *Brand*, 303 U. S. 95, 98; *International Steel Co.* v. *National Surety Co.*, 297 U. S. 657, 666; *Grayson* v. *Harris*, 267 U. S. 352, 358.

III

CONGRESS HAS AUTHORIZED THE INCLUSION OF THE 160-ACRE LIMITATION AND THE REPAYMENT PROVISIONS IN CONTRACTS TO BE ENTERED INTO BY THE BUREAU OF RECLAMATION AND THE STATE IRRIGATION DISTRICTS

Basically the court's decision that the 160-acre limitation and the repayment provisions were unauthor-

ized depends upon its construction of Section 8 of the Reclamation Act of 1902 (*supra*, p. 4). The pertinent provision of that section reads:

> That nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws * * *.

The California court has now determined that the 160-acre limitation and the repayment provisions of the contracts are inconsistent with state law requiring the proportionate distribution of water for irrigation (Cal. Water Code, Sec. 22250) and the right of landowners to receive irrigation water. Since, the court reasoned, under Section 8 of the 1902 Act state law prevails, it found that these contractual provisions are unauthorized. It attempts to explain away the mandatory inclusion of the 160-acre limitation as provided by Section 46 of the Omnibus Adjustment Act of 1926 as applicable solely to public lands. We believe that Section 8 is not properly to be construed as controlling over the specific requirements of the reclamation statutes and that the Congressional intent with respect to the inclusion of the contractual provisions as to these very projects has been repeatedly reaffirmed.

A. CONGRESS HAS UNEQUIVOCALLY MANIFESTED ITS INTENTION THAT THE EXCESS LAND LAWS SHALL APPLY IN CALIFORNIA AND TO THE CENTRAL VALLEY AND SANTA BARBARA PROJECTS

It is not open to argument that from the beginning of the Federal reclamation program the national policy has been one of making the benefits of this program available to the largest number consistent with the public good. To accomplish this policy, and to prevent monopoly of the rights to use the waters made available by these federally-financed projects, Congress expressly limited the quantity of lands in single ownership—both public lands opened for entry under the reclamation law and privately owned lands—which might receive project water. See Taylor, *The Excess Land Law: Execution of a Public Policy,* 64 Yale L. J. 477.

Thus, Section 5 of the Reclamation Act of June 17, 1902, 32 Stat. 389, 43 U. S. C. 431, *supra,* p. 3, provides, *inter alia:* "No right to the use of water for land in private ownership shall be sold for a tract exceeding one hundred and sixty acres to any one landowner * * *."

Section 3 of the Act of August 9, 1912, 37 Stat. 266, 43 U. S. C. 543, 544, provides that no person shall at any one time acquire, own, or hold irrigable land for which entry or a water right application shall have been made under "the said reclamation act of June seventeenth, nineteen hundred and two, and acts supplementary thereto and amendatory thereof * * * in any case in excess of one hundred and sixty acres, nor shall water be furnished under said Acts nor a water right sold or recognized for such excess * * *".

And Section 46 of the Omnibus Adjustment Act of May 25, 1926 (*supra*, p. 8), provides that upon completion of any new project no water shall be delivered until a contract shall have been made with an irrigation district organized under State law providing, *inter alia*, that all irrigable lands "held in private ownership by any one owner in excess of one hundred and sixty irrigable acres" shall be appraised, etc., and "that no such excess lands so held shall receive water from any project or division if the owners thereof shall refuse to execute valid recordable contracts for the sale of such lands * * *".[9]

In *United States* v. *Gerlach Live Stock Co.*, 339 U. S. 725, it was held that, when the Central Valley project was authorized and reauthorized as a reclamation project, Section 8 of the 1902 Act and the administrative practice thereunder with respect to water

[9] Reclamation law contains many other references to the acreage limitations, ranging in time from the Act of February 21, 1911, 36 Stat. 925, 43 U. S. C. 523, 524, through Sections 12 and 13 of the Reclamation Extension Act of August 13, 1914, 38 Stat. 689, 690, 43 U. S. C. 418, 435, 443, to the Act of September 2, 1957, 70 Stat. 590, which amended the Columbia Basin Project Act, 57 Stat. 14, all of which evidence the consistency with which the Congress has adhered to acreage limitation as a basic policy in administration of the reclamation program. Although there are instances where particular projects have been exempted because of circumstances peculiar to those projects (see the discussion, *infra*, pp. 40–42, with respect to the Santa Maria Project in California) such exemptions have always been accomplished by express enactment to that effect. We disagree with the suggestion at page 48 of appellants' brief to the effect that acreage limitations are not applicable in the Imperial Irrigation District in California.

rights vested under state law became applicable. It follows that the excess land provisions of the reclamation law likewise became applicable to the Central Valley project. Both the administrators and Congress have always understood this to be the fact. H. Doc. 416, 84th Cong., 2d Sess., states that these authorizations made applicable the excess land laws to the Central Valley project, quoting Section 46 of the 1926 Act (pp. 569–570).

The argument that this specific and long-established 160-acre limitation must take second place to the general recognition of state law in Section 8 of the 1902 Act runs counter to the settled method of reading federal legislation. In the first place, Section 5 of the 1902 Act—the very same statute which contains Section 8—affirms and contemplates the 160-acre limitation. *Supra*, p. 36. The 1902 Act must certainly be read as a whole, and the specific requirements of Section 5 qualify the much more general ones of Section 8.[10] The same is true of the specific provisions of Section 46 of the Omnibus Adjustment Act of 1926. In addition, Section 46 is the later enactment by 24 years and must be taken to prevail over the earlier provision.[11]

The argument that Section 46 applies only to public lands is contrary to its specific language ("all irrigable land held in private ownership") and finds no support

[10] *Fourco Glass Co.* v. *Transmirra Corp.*, 353 U. S. 222, 228–229; *MacEvoy Co.* v. *United States*, 322 U. S. 102, 107; *Ginsberg & Sons* v. *Popkin*, 285 U. S. 204, 208; *Arizona* v. *California*, 283 U. S. 423; *Baltimore National Bank* v. *Tax Commission*, 297 U. S. 209, 215.

[11] *United States* v. *Borden Co.*, 308 U. S. 188, 198–199; *Girouard* v. *United States*, 328 U. S. 61, 70.

in its legislative history. But aside from these standard means of construction, repeated acts of Congress with respect to the very project here involved constitute a Congressional reaffirmation of its original action and an approval of the administrative action thereunder.

The policy of Congress not to exempt the Central Valley Project from the excess land laws was reaffirmed after full discussion in hearings, in committee reports, and after vigorous debate in both houses on the Omnibus Rivers and Harbors Bill of 1944. The bill failed of passage because of refusal of the Senate to concur in a conference report which would have included the exemption from the excess land laws, all of the debate being addressed to the excess land law issue, 90 Cong. Rec. 9493–9499.[12] The bill was promptly passed at the next session of Congress, omitting the disputed section.

In his annual report for 1946, the Secretary of the Interior stated that on October 18, 1945, he had executed the first of the Central Valley Project water contracts, stating (p. 62) "the excess land limitations and other requirements of law are fully incorporated in the Central Valley contract form". The 1947 Annual Report (p. 120) referred to the introduction of S. 912 to exempt Central Valley and two other projects from the excess land laws. Extensive hearings were had but the bill was never reported out of the Senate subcommittee (App., *infra*, p. 78). As construction of the project continued, the Secretary informed

[12] For the convenience of the Court we have summarized in the Appendix, *infra*, pp. 70–87, the legislative materials relating to this case.

Congress of the execution of contracts with irrigation districts or other water users organizations, listing them by name in most instances (App., *infra*, pp. 77–87). For example, execution of the Madera, Ivanhoe, and Santa Barbara contracts was reported in the Annual Report for 1950 (Ivanhoe and Santa Barbara, p. 39) and 1951 (Madera, p. 40). By the time of the 1951 report, the project had proceeded to the extent that individual contracts with water users under the excess land laws were appropriate, so that report stated (p. 109): "The administration of the excess land provisions of Reclamation law was given active attention. Five recordable contracts providing for delivery of Central Valley Project water to 3,570 acres of excess land are the first to be executed on the project". During this period the series of statutes whereby the project was reauthorized and additional units added to it were passed (see *supra*, pp. 10–12). And funds were appropriated annually for continuation of construction.

Continuing congressional intention that the excess land laws shall apply to the Cachuma Division of the Santa Barbara County project is equally clear. The contract itself was recognized as valid in the 1950 Appropriation Act referred to in the Statement (*supra*, p. 18). The comprehensive project for Santa Barbara County embraced, besides the Cachuma unit, the Santa Maria project which is to replenish underground water supplies for irrigation by pumping, by regulated releases from the Vaquero storage dam which would percolate through natural streams to the underground reservoirs. H. Doc. 587, 80th Cong., 2d Sess., p. 30–31.

This project was authorized by the Act of September 3, 1954, 68 Stat. 1190, which provides "That in view of the special circumstances of the Santa Maria project" the excess land laws should not be applicable thereto "so long as the water utilized on project lands is acquired by pumping from the underground reservoir." The committee reports of both houses of Congress were at pains to point out the reasons why in the physical situation of this project, where the waters were mingled underground, it would be impossible to separate project water from water to which the landowners otherwise would be entitled, and also that in the physical situation not very much of the water would go to excess lands. H. Rept. No. 1098, 83rd Cong., 2d Sess., pp. 2–3. The reasons for a special exception to the excess land laws which otherwise would be applicable were explained in detail to both houses of Congress in the debates, 100 Cong. Rec., pp. 1145–1146, 14250, 15008. Congress could hardly have shown more clearly than it did by passing this bill its intention to apply the excess land laws to all units of the Santa Barbara project except the Vaquero Reservoir. During the debates on this bill, the unswerving policy of Congress was well stated as follows (100 Cong. Rec. 1150):

> Mr. SHELLEY. May I say in conclusion that the discussion here has brought out one thing which I think is very significant. Throughout the years the Congress of the United States has rejected efforts to repeal or widely modify or emasculate the 160-acre limitation feature of the law. Time and time again it has been proposed by groups outside who wished that

> law lifted, but the Congress has rejected such efforts. I think the very discussion that has been had on the floor here today evidences a continued desire and interest on the part of the House of Representatives to continue the 160-acre limitation and this should be adequate notice to those outside of the Halls of Congress that the House will continue to maintain the attitude that it has throughout the years to preserve that law and to say that it works in the best interests of the people of this country, particularly the young veterans whom so many of us are desirous of seeing set up on small family sized farms in the West.

Even if there could otherwise be any question as to the applicability of the acreage limitations of the reclamation law to these projects, we submit that these Congressional actions, specifically related to them, are conclusive of the issue—constituting ratification of the administrative construction and confirmation and approval of the contracts. Cf. *United States* v. *Gerlach Live Stock Co.* 339 U. S. 725; *Fleming* v. *Mohawk Co.*, 331 U. S. 111; *Brooks* v. *Dewar*, 313 U. S. 354; *Mason Co.* v. *Tax Comm'n.*, 302 U. S. 186; *Swayne & Hoyt, Ltd.*, v. *United States*, 300 U. S. 297.

B. CONGRESS HAS EXPRESSLY APPROVED THE TERMS OF THE CONTRACTS WITH REGARD TO REPAYMENT

The basic law, as well as the ratification and confirmation of the administrative view as to proper contract provisions with complete detailed knowledge of the administrative construction as to repayment provisions, is just as clear as in the case of the excess land laws. The United States expends vast sums

on reclamation projects, nearly a billion dollars on the Central Valley Project alone. Part of that expenditure which is allocated to irrigation and municipal purposes is required to be repaid by the water users. The time required for such repayment was originally set at 10 years but has been progressively lengthened since then (see Appellants' brief, p. 66). Because of difficulties encountered in various projects, the question of what repayment provisions should be required was investigated with extraordinary care by a special committee, resulting in the Reclamation Project Act of 1939, 53 Stat. 1195, 43 U. S. C. 485°(h), AJS 241–245. Under Section 9 (d) of that Act, an organization of irrigators may enter into a repayment contract in which it agrees to pay annual installments which, over a period of forty years or less, will repay, without interest, the amount of the cost of the project which has been allocated to irrigation. This is the contract Congress has required to be used for *distribution systems* within the Districts. Practical considerations prohibit the application of such a process to the *water supply facilities* of vast projects like the Central Valley undertaking. Cost estimates made when the project was first undertaken bear no resemblance to the amount ultimately spent on the project.

Section 9 (e) was enacted to meet these difficulties. It provides, as an alternative to the 9 (d) repayment provisions, that the reclamation officials may contract, for a maximum forty year term, to supply water to the irrigators at a rate fixed by the Secretary of the Interior to recover annual operation and

maintenance cost "and an appropriate share of such fixed charges as the Secretary deems proper, due consideration being given to that part of the cost of construction of works connected with water supply and allocated to irrigation" (AJS 245). A comparable provision is made as to contracts to furnish water for municipal or miscellaneous purposes in Section 9 (c) (AJS 241–242). At the end of the contract period, the costs of the project having become stabilized, the rates can be re-examined to determine the reasonable future payments, having in mind the ability of the water users to pay. Another important element which will become more certain by that time is the amount of sales of hydro-electric power developed from the project. This is a large factor in the Central Valley project since there are estimates of $439,470,800 as the probable repayment or return from commercial power (H. Doc. 416, p. 853; H. Doc. 53, 83rd Cong., 1st Sess., p. 5).

After the passage of the 1939 Act, Congress several times had these contracts before it. In his 1946 Annual Report, the Secretary of the Interior said (p. 62): "On October 18, 1945 the Secretary of the Interior executed the first of the Central Valley Project water contracts. During the following months negotiations with approximately 12 additional irrigation districts have been prosecuted with a view to making available the full Friant-Kern supply throughout the San Joaquin Valley. The general form of contract utilized in these negotiations is for water service over a 40-year period at a rate that will not exceed a maximum of about $3.50 per acre foot. That type of con-

tract is made necessary by the character of the project, involving among other things extensive water exchanges and other physical features that preclude the standard repayment arrangements." Later in the report the contract was referred to (p. 89) as "the first water contract ever consummated under the provisions of Section 9 (e) of the Reclamation Project Act of 1939." The following year, in the Allocation of Costs and Feasibility Report (H. Doc. 416, pp. 574–601; H. Doc. 146, 80th Cong., 1st Sess.), the estimates of return by the year 2009 were based upon contracts made under 9 (e) and 9 (c) of the 1939 Act (pp. 577, 578) and the importance of flexibility with regard to water and cost allocations was stressed as the factor which made necessary the 9 (e) provisions (p. 584). This report also stated (p. 597) that among the criteria to be applied to the project was the fact that water for irrigation would be delivered under the provisions of 9 (e) and that "the rates will be sufficient to cover all customary operating expenses and a fixed charge, the total determined on the basis of farm benefits of the water and of the estimated ability of water users to pay over a protracted period.". In the same month that this report was submitted, the details as to the "9 (e)" provisions were explained in appropriation hearings, and a copy of one of the Central Valley contracts was filed with the committee. When explanations were first started, Representative Gore asked deferment until he read the contract (Hearings before Subcommittee of House Committee on Appropritions on H. R. 3123, 80th Cong., 1st sess., p. 210–211). This was done and a considerable time later there were

discussed the details of how the 9 (e) contract operates and the objections that had been voiced thereto by some organizations in the West, especially to the lack of provisions for renewal (*id.*, pp. 734–738). The sub-committee concluded that the objections were not well taken.

With this complete and exact knowledge both of the administrative construction of 9 (e) and of the precise contract terms whereby that construction was applied to Central Valley contracts, Congress took the many actions cited above (pp. 9–12) in re-authorizing the project and appropriating funds for execution of the plans.

In the case of the Santa Barbara project, the Congressional intention also was made clear. The recommendations for that project specified that "9 (e)" contracts would be employed as to water supplied. H. Doc. 587, 80th Cong., 2d Sess., pp. IV, 13–14, 33. This report is an excellent demonstration of how the "9 (e)" provisions operate. The cost of the project had been based upon 1947 prices and it was estimated that the cost, without interest, would be repaid in 50 years. In commenting on the report, the State of California Division of Water Resources said that, based upon 1948 prices, the Bureau of Reclamation cost estimate was 10% low (*id.*, pp. 15–16). In submitting the report to Congress, the Secretary of the Interior stated that "Any increase or decrease in costs will, of course, be reflected in extensions or reductions, as the case may be, of the period during which construction costs are returned by collections from irrigation, municipal and other water supply users" (*id.*, p. III). The

State comments, in urging approval of the project, had also recommended "that such contracts provide for the acquisition by the local interests and water users of the project works and water rights by and through the necessary Congressional action". (*id.*, p. 17). Congress authorized the project without limiting the 9 (e) provision in any respect.

Finally, any possible question that, under Section 9 (e) contracts, the water rate to be fixed by the Secretary is to include a construction component and that revenue produced in excess of operation and maintenance costs is to be treated as repayment by the district of its share of construction costs has been effectively settled by the Congress. Act of July 2, 1956, 70 Stat. 484, 43 U. S. C. Sec. 485h (1–4), AJS 246–248. The purpose of that Act was expressly stated to be to meet three major objections which had been raised to 9 (e) contracts, *i. e.*, "(1) that no assurance can be given in the contract itself or in any other document binding upon the Government that the contract will be renewed upon its expiration; (2) that the water users who have this type of contract are not assured that they will be relieved of payment of construction charges after the Government has recovered its entire irrigation investment; and (3) that the water users are not assured of a 'permanent right' to the use of water under this type of contract." S. Rept. No. 2241, June 18, 1956 (to accompany H. R. 101), 84th Cong., 2d sess., 2 U. S. Code Cong. and Admin. News, 1956, p. 2980. The bill which became the 1956 Act was enacted with the California 9 (e) con-

tracts expressly in mind. 102 Cong. Rec. 10635. Indeed, with specific reference to the doubt which had been expressed as to whether the excess paid over and above the amount for maintenance and operations would be credited to the district against the capital cost of the project, Mr. Clair Engle of California, Chairman of the House of Representatives Committee on Interior and Insular Affairs, stated: "There have been many complaints in the West that that is not presently the law. *We think the Federal Government could do it anyway.*" (Emphasis added.) 102 Cong. Rec. 2902. This was clear almost 10 years earlier when these same objections were considered in the 1947 Appropriation Committee Hearings (*supra*, p. 45). Thus, Congress expressly reaffirmed what it had said before and ratified the administrative construction. In any event, since the 1956 Act specifically answers the objections as to lack of provisions for renewal, lack of credit for payments made toward costs, and lack of a permanent right to receive project water—and since it permits amendment of existing contracts to so provide if the contracting party so desires—the objections voiced by the majority of the California Supreme Court plainly lack merit at this time.

We submit that this history shows that Congress has, with full knowledge of the matter, declared that the Central Valley Project and the Santa Barbara Project shall be operated under the provisions of the contracts here at issue.

IV

THE FEDERAL GOVERNMENT HAS CONSTITUTIONAL POWER TO IMPOSE THE DISPUTED CONTRACTUAL REQUIREMENTS

We have shown in Point II, *supra,* pp. 31–34, that the California Supreme Court rested its decision on the ground that, as a matter of federal law, the contracts in these cases should not, and could not validly, contain the disputed provisions. We have also shown (in Point III, *supra,* pp. 34–48) that the federal statutes *do* require or permit the inclusion of those requirements. In this Point, we urge that those federal requirements are valid under the Federal Constitution.

A. THE FEDERAL GOVERNMENT HAS CONSTITUTIONAL POWER TO UNDERTAKE THE CENTRAL VALLEY AND SANTA BARBARA PROJECTS

In the first place, there can now be no doubt of the Federal Government's general authority to establish and execute the Central Valley and Santa Barbara Reclamation Projects. In *United States* v. *Gerlach Live Stock Co.,* 339 U. S. 725, 738–739, this Court examined the Central Valley Project, found that Congress "elected to treat it as a reclamation project," and expressly upheld its legal validity on the constitutional ground that "the power of Congress to promote the general welfare through large-scale projects for reclamation, irrigation, or other internal improvement" is "clear" and "ample." The same reasons establish that the parallel Santa Barbara Project is also within the power granted to Congress by the

"general welfare" provisions of the Federal Constitution. See also *United States* v. *Butler*, 297 U. S. 1, 65–67; *Helvering* v. *Davis*, 301 U. S. 619, 640–641. In these Projects, the United States is expending federal funds and acquiring federal property for a concededly valid public and national purpose—the irrigation of the arid lands of the West, and the promotion of agriculture in that area. It is likewise indisputable that in performing these proper functions the United States may acquire and operate property. *Gerlach*, *supra*, at pp. 728–729, 733–734.[13]

B. THE FEDERAL GOVERNMENT MAY IMPOSE REASONABLE CONDITIONS ON THE RECEIPT OF FEDERAL MONIES AND THE USE OF FEDERAL PROPERTY

1. It is also settled beyond challenge that the Federal Government may impose reasonable conditions on the use of federal funds, federal property, and federal privileges. This power flows not only from the "general welfare" clause of Article I, Section 8, of the Constitution, but also from Article IV, Section 3, dealing with the disposition of federal property.[14] This Court has repeatedly recognized that the interest of the United States in its own property is subject to the Federal Government's power of disposal. "* * *

[13] See also Section 6 of the Reclamation Act of 1902 (quoted *supra*, pp. 3–4) to the effect that title to and operation of the water supply works "shall remain in the Government until otherwise provided by Congress."

[14] Article IV, Section 3, provides in pertinent part:

> * * * * * *
>
> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; * * *.

no one has ever contested its supreme right to dispose of its own property in its own way." *McClung* v. *Silliman*, 6 Wheat. 598, 605. Similarly, in *United States* v. *San Francisco*, 310 U. S. 16, 29, the Court said "Article 4, § 3, Cl. 2 of the Constitution provides that 'The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory and other Property belonging to the United States.' The power over the public land thus entrusted to Congress is without limitations. 'And it is not for the courts to say how that trust shall be administered. That is for Congress to determine.'" See also *United States* v. *California*, 332 U. S. 19, 27; *Federal Power Commission* v. *Idaho Power Co.*, 344 U. S. 17, 21; *Alabama* v. *Texas*, 347 U. S. 272, 273–274.

This power over both its property and funds extends to the imposition by the Federal Government of reasonable conditions on use. Thus, limitations have been imposed on political activities of state highway employees as a condition to receipt of federal highway funds.[15] *Oklahoma* v. *Civil Service Comm.*, 330 U. S. 127. Minimum requirements for state unemployment

[15] In addition, under federal highway legislation, the receipt of federal aid is conditioned on such requirements as installation of appropriate protective devices at railroad crossings (23 U. S. C. 24a); installation of informational, regulatory, and warning signs, curb and pavement markings and traffic signals subject to concurrent approval by the state highway departments and the federal highway administrator (23 U. S. C., Supp. IV, 63); joint approval by the Secretary of Commerce and the state highway departments of the geometric and construction standards of highways in the interstate system (23 U. S. C., Supp. IV, 158 (i)); and limitation on the weight and width of vehicles using the system (23 U. S. C., Supp. IV, 158 (j)).

compensation systems have been made a prerequisite to receipt of tax benefits by state employers. *Steward Machine Co.* v. *Davis*, 301 U. S. 548. Federal control of the liquidation of debts of the political subdivisions of a state have been required as a condition to enjoying benefits of the federal bankruptcy powers. *United States* v. *Bekins*, 304 U. S. 27. Regulations requiring union officers to sign non-communist affidavits have been made a condition to the union's receiving the benefits of federal labor legislation. *Inland Steel Co.* v. *N. L. R. B.*, 170 F. 2d 247, 265 (C. A. 7), affirmed *sub nom. Communications Association* v. *Douds*, 339 U. S. 382. The urban renewal program, approved generally in *Berman* v. *Parker*, 348 U. S. 26, requires by federal regulation that property acquired by the local public agency must be sold on condition that the purchaser devote it to the renewal plan approved by the federal officials and comply with such other conditions as the federal administrator may prescribe; federal grants and loans for urban renewal require written federal approval of any basic change in the redevelopment plan and a federal approval of both the prices and the conditions upon which land is either acquired or sold. The power to impose these conditions was sustained in *Starr* v. *Nashville Housing Authority*, 145 F. Supp. 498 (M. D. Tenn.); this Court affirmed *per curiam* on the authority of the *Berman* case, *Starr* v. *Nashville Housing Authority*, 354 U. S. 916. Another recent example is *Federal Power Commission* v. *Idaho Power Co.*, 344 U. S. 17, upholding the Commission's authority to condition a private utility's

use of government lands on an agreement to carry government power.

In short, the United States is not required, if it bestows a bounty or permits the use of its property, to refrain from imposing any conditions or limitations; on the contrary, it may properly establish reasonable conditions germane to the objectives of the grant or relevant to the federal interests in the property being used or dispensed.

2. Conversely, a state may not *compel* the use of the federal property on terms other than those prescribed or authorized by Congress. The Supremacy Clause (Art. VI) obviously forbids such a direct invasion of the Federal Government's right to manage its own property. See, *e. g., Public Utilities Commission of the State of California* v. *United States,* No. 23, this Term, decided March 3, 1958; *Leslie Miller, Inc.* v. *Arkansas,* 352 U. S. 187; *Standard Oil Co.* v. *Johnson,* 316 U. S. 481. As this Court said in *Nebraska* v. *Wyoming,* 325 U. S. 589, 614–615, discussing the Reclamation Act of 1902 and water rights under state laws: "We do not suggest that where Congress has provided a system of regulation for federal projects it must give way before an inconsistent state system."

C. THE DISPUTED CONTRACTUAL PROVISIONS ARE SUCH REASONABLE CONDITIONS

1. *The 160-acre limitation:*—The California Supreme Court thought that the 160-acre limitation was invalid because (*a*) it constitutes "an unlawful discrimination" against large landholders in violation of the right to "equal protection of the laws", and (*b*) it

constitutes a taking of the excess property without just compensation, and without taking account of "possible damage to the remainder of the land because of a possible severance" (AJS 46–49). Neither of these rulings has any merit.

(*a*). There is no unfair discrimination in the 160-acre limitation.[16] The project is designed to benefit people, not land as such. It is a reasonable classification to limit the amount of project water available to each individual in order that the Government's benefits are distributed in accordance with the greatest good for the greatest number of individuals. The limitation benefits units of land sufficient to maintain one family, assures that the large expenditure of federal funds will not go in disproportionate share to a few individuals based upon large land holdings, and prevents use of the reclamation service for speculation purposes. The restriction merely establishes an upper limit, equally imposed upon each person, upon the federal bounty to be bestowed.

In this connection, it is especially significant to note that it is a valuable bounty which is being granted by the Federal Government to the landholders. The water to be delivered by these federal projects has great value, and its availability is, in effect, a subsidy to the irrigators receiving it. The cost of the struc-

[16] It must be remembered that this limitation is not a limitation upon the quantity of land any landowner may hold. The restriction is only upon the amount of land which can be irrigated with project water—water which, without the project, would not be available at all. The contracts do not limit the right of landowners to irrigate their excess lands with non-project water.

tures necessary to collect and deliver the water is immense. The project will serve navigation, flood control, and power development, as well as irrigation and reclamation. That portion of the costs allocated to navigation and flood control (approximately 12 percent of the total) is not reimbursable. Irrigators are scheduled to repay the United States only a small fraction of the total reimbursable costs (AJS, fn. 3, pp. 78–79; see also H. Doc. 416, p. 598). In addition, the irrigators will have the long-term use of federal money necessary to finance the construction of the dams, storage and distribution systems for their benefit, free of interest. It is estimated that this interest cost alone, over the pay-out period, would roughly equal the capital investment to put water on the land in the Central Valley Project.[17] In sum, this case involves a federal bounty in the form of the privilege of enjoying water benefits at a price much less than the cost of the water made available by the dams, reservoirs, canals and other works constructed by the United States. The Federal Government therefore has a special interest in seeing that its bounty is spread as widely as possible and is not monopolized. In *Wickard* v. *Filburn*, 317 U. S. 111, 131, upholding the validity of crop marketing quotas, this Court said: "It is hardly lack of due process for the Government to regulate that which it subsidizes."

[17] This computation and other figures showing the dollar value of the federal subsidy to irrigators appear in a letter from six Members of Congress to the Attorney General of California, printed as an appendix to the petition for rehearing filed in the California Supreme Court by the State of California and a part of the record in this Court.

(*b*). The California Supreme Court also erred in upholding the claim of denial of just compensation. Chief Justice Gibson correctly stated in his dissenting opinion below that "if there is any state-recognized vested right which, in fact, conflicts with the acreage limitation, that right may be taken and compensated for by the federal government under its power of eminent domain" (AJS 73, 79; cf. p. 48). The trust declared and applied by the majority of the court cannot have the effect of imposing a state restriction on the federal power of eminent domain. That power "is inseparable from sovereignty" because it permits "acquisition of the means or instruments by which alone governmental functions can be performed." "It can neither be enlarged nor diminished by a State. Nor can any State prescribe the manner in which it must be exercised. The consent of a State can never be a condition precedent to its enjoyment." *Kohl* v. *United States*, 91 U. S. 367, 371–372, 374. It makes no difference whether the property "sought to be condemned is held * * * in trust instead of in fee." *United States* v. *Carmack*, 329 U. S. 230, 239.[18] The beneficiaries may press their claims to compensation.

There is authority for awarding compensation for whatever vested rights in water are taken or de-

[18] The scope of the federal power of eminent domain is discussed at length in *Constitutional and Statutory Authority to Condemn*, 43 Iowa L. Rev. No. 2, pp. 170–190, written by Roger P. Marquis, one of the writers of this brief. See also Brief for the Federal Power Commission as Amicus Curiae, *City of Tacoma* v. *The Taxpayers of Tacoma*, No. 509, this Term.

stroyed in execution of these projects. In *United States* v. *Gerlach Live Stock Co.*, 339 U. S. 725, this Court approved compensation for a taking under eminent domain where one of the dams in the Central Valley Project impaired the seasonal inundations of the San Joaquin River which had theretofor supplied water to claimants' riparian land. In addition, Section 7 of the Reclamation Act of June 17, 1902, 32 Stat. 388, 389–390, 43 U. S. C. 421, and Section 2 of the River and Harbors Act of August 26, 1937, 50 Stat. 844, 850, expressly authorize the use of eminent domain to acquire "any rights" and "water rights" necessary for the purposes of these projects (AJS 239–240).

There is a very serious question, of course, whether rights such as those of the beneficiary of the trust defined by the court below are actually compensable. The court described the rights variously as the "inchoate right of present and potential water users of the state," "not * * * a vested right * * * in the sense that such right became a part and parcel of the freehold estate," "incipient and conditional," and "inchoate and incomplete and subject to defeasance" (AJS 33, 45, 146, 147, 149). While no decisions have been found dealing with the type of inchoate and incomplete right described by the court in these cases, it is generally held that such rights as inchoate dower and the possibility of reverter are not compensable property interests in condemnation proceedings and that the holders thereof are not even entitled to notice

of such proceedings."[19] Certainly, the "rights" of the beneficiaries under this asserted trust are far more nebulous than inchoate dower, etc. even assuming that a true trust exists (but see *infra*, p. 66).

In any event, the compensation would be merely nominal, since it would have to be ascertained without reference to enhancement in value due to the federal projects. *United States* v. *Miller*, 317 U. S. 369, 377–379; *United States* v. *Cors*, 337 U. S. 325.[20] The "rights" relate to "water not hitherto available" (AJS 72).[21] A prospective use of property can be con-

[19] *Woodville* v. *United States*, 152 F. 2d 735 (C. A. 10), certiorari denied, 328 U. S. 842; *Beard's Erie Basin, Inc.* v. *People of New York*, 142 F. 2d 487 (C. A. 2); *United States* v. *2,184.81 Acres of Land*, 45 F. Supp. 681 (W. D. Ark.); *United States* v. *1, 19.15 Acres of Land*, 44 F. Supp. 449 (E. D. Ill.); *United States* v. *2,086 Acres of Land*, 46 F. Supp. 411 (W. D. S. C.); *First Reformed Dutch Church* v. *Croswell*, 210 App. Div. 294, 206 N. Y. S. 132; *State* v. *School District No. 1*, 79 Mo. App. 103; *Briegel* v. *Briegel*, 307 Pa. 93, 160 Atl. 581; *Salvatore* v. *Fuscellaro*, 53 R. I. 271, 166 Atl. 26; *Harris* v. *Kansas City*, 293 Mo. 572, 579, 239 S. W. 1077, 1078; *Long* v. *Long*, 99 Ohio St. 330, 124 N. E. 161; *Flynn* v. *Flynn*, 171 Mass. 312, 50 N. E. 650; *Summers* v. *Sullivan*, 39 Mont. 42, 101 Pac. 166; *Wheeler* v. *Kirtland*, 27 N. J. Eq. 534; Comment, 34 Mich. L. Rev. 530; Stoyles, *Condemnation of Future Interests*, 43 Iowa L. Rev. 241, 247.

[20] The provision in Section 46 of the Omnibus Adjustment Act of May 25, 1926, 44 Stat. 649, 43 U. S. C. 423e, fixing the sale price of lands in excess of 160 acres "on the basis of its actual bona fide value at the date of appraisal without reference to the proposed construction of the irrigation works" is merely an enactment of this rule of law (see *supra*, p. 15, n. 3).

[21] "It should be noted in this connection that none of the landowners in the district has riparian rights or perfected appropriative rights to the waters involved here and that the land of Courtney McCracken, the individual defendant who is opposing confirmation of the contract, is located about 100 miles from the river from which such waters come." (Dissent, AJS 79–80.)

sidered only to the extent that it is so reasonably probable as to affect market value. *Olson* v. *United States*, 292 U. S. 246, 257. In determining whether such reasonable probability exists, the possibility of government action must be excluded. This is simply another aspect of the basic principle of the *Miller* case that special value to the condemnor must be excluded. *United States* v. *Chandler-Dunbar Co.*, 229 U. S. 53; cf. *United States ex rel. T. V. A.* v. *Powelson*, 319 U. S. 266.[22] No individual or private organization could possibly undertake the Central Valley project. Indeed, it became a federal project because the State of California could not finance it. And it is financially feasible only because the United States is contributing substantial funds on account of direct federal purposes such as navigation,[23] because revenues will be obtained from power and other sales, and because interest is being waived. It would be an idle dream for anyone to suppose that the farmers or other landowners in the Central Valley could secure the water which will be delivered to them through such agencies as the Ivanhoe and Madera Districts, absent the action of the United States. An effort to obtain a

[22] Applications of this principle to exclude attempts to enhance awards because of prospects of various government projects are illustrated by *United States* v. *Rayno*, 136 F. 2d 376 (C. A. 1), (flood control dam); *United States* v. *Lambert*, 146 F. 2d 469 (C. A. 2) (airfield acquired by United States to promote private manufacture of war time aircraft); *United States* v. *Cutlin*, 204 F. 2d 661 (C. A. 7) (ordnance plant); *United States* v. *Foster*, 131 F. 2d 3 (C. A. 8), certiorari denied, 318 U. S. 767 (ordnance plant).

[23] In the 1952 estimate, $82,030,000 of the cost was allocated to nonreimbursable items of navigation, flood control and fish and wildlife (H. Doc. 416, p. 668).

substantial award for the loss of their expectancy of getting such water would, therefore, simply be attempted payment (contrary to settled principle) for values the government's project has itself created.

2. *The contract provisions as to repayment, etc.*:— The California Supreme Court has held the contracts invalid for three reasons besides the presence of the excess-land provisions. These other grounds are (1) that the contract must provide for payment of construction costs within 40 years, (2) that the contract must provide for conveyance of the property when payment is completed because the district "is entitled to ownership of the works and property of the storage and distribution system free from any claims of the United States", and (3) that the contract must provide for a permanent right to water in the persons entitled (AJS 39–40, 63–64). Insofar as these holdings represent—as we think they do (see Point II, *supra*)—rulings on federal law, they are incorrect.

(*a*). Obviously, the period and the details of the process of repayment can be determined by the Federal Government, as part of the conditions of its grant. See *supra*, pp. 50–53. The particular requirements contained in the "9 (e)" provisions in these contracts represent a reasoned judgment as to such appropriate conditions. There is no magic in the 40-year term or any other particular period. See App., *infra*, pp. 70–74. The expressed and thoroughly understood purpose of 9 (e) contracts, especially as applied to the Central Valley Project, was to avoid any attempt to establish an iron-clad cost figure for the project. See *supra*, p. 43. Indeed,

even now, 20 years after the project was taken over as a federal undertaking, figures on total costs are merely estimates which are five times the amount originally stated (*supra*, p. 11). Nor will the completion of construction eliminate all variables, making possible a definitive repayment contract, as is possible for the distribution systems within a particular district. This is so because all of the cost of the project will by no means be borne by the irrigators and municipal water users. In 1952, it was estimated that sales of hydroelectric power would return $439,470,000 after the Trinity Division should be added to the project. H. Doc. 416, p. 853. How accurate this forecast was remains to be seen. And the water service rates to irrigators must take into consideration the ability of the farmers to pay. It is thus absolutely essential to operate the project on a tentative cost basis until it is completed and the many variables become stabilized. Moreover, there are many districts or other water user organizations which receive benefits of water produced by the project as an integrated whole. It would be impossible to transfer to the Ivanhoe District, the Madera District, and all the other organizations, title to and operation and maintenance of some portion or some feature of the vast water supply system of the Central Valley Project, as the court below holds should be done. We refer, of course, to the water supply works, such as the various dams and reservoirs, the power facilities and the interchange of water facilities, and not to local distribution systems within a district such as are covered by the 9 (d) portion of the Ivanhoe and Madera con-

tracts. Congress, in the Reclamation Act of 1902, Sec. 6, 32 Stat. 389, 43 U. S. C. 491, 498, AJS 235–236, expressly provided, "That the title to and the management and operation of the reservoirs and the works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress." Congress has never made "other" provisions with regard to the water supply works. See the Appellants' Brief, pp. 88–89.

In addition, Congress, as this Court has held it was authorized to do, has directed that the project shall be operated "first, for river regulation, improvement of navigation, and flood control * * *." *United States* v. *Gerlach Live Stock Co.*, 339 U. S. 725, 731. A liquidation of the Central Valley Project by turning various elements over to various irrigation districts, even if practically possible, would render nugatory this authorized Congressional direction, which governs until it is changed.[24] As a Senate Committee has recently stated (Appellants' Br., pp. 88–89), the question of transfer of dams and other supply works, as distinguished from distribution systems, "involves considerations of national policy, as well as interstate considerations and should be taken up in connection with matters of broad national policy affecting water resources and their use." As already shown, the United States—having made such a tremendous investment in the project works, much of which will not

[24] All of the history of the project controverts the idea of the majority opinion below that the United States is simply the financial backer of the project and "that the parties contemplated a state project to be eventually owned and operated by the state" (AJS 18).

be repaid and is therefore a bounty to the beneficiaries (*supra*, p. 55)—has power to make appropriate provision as to title, custody, and management of the project.

(*b*). We briefly note the factors which the court below felt required the inclusion of the contractual provisions it desired. Apparently, the thought was that otherwise the United States would deny any further benefits to the Ivanhoe District and its members and, at the end of 40 years, would refuse to recognize any rights to water extending beyond the 40 years, and would deny renewal or would renew only on unreasonable terms (see AJS 54–56, 63–64). These were the contentions urged upon Congress, and rejected, at the time the Central Valley Project contracts were approved and at the time the Santa Barbara Project was authorized (*supra*, p. 46). In the field of the disposition of Federal property, the courts cannot impose what Congress rejected (*supra*, pp. 50–51).

Furthermore, there are both practical and legal answers to the contention. Certainly, the Central Valley Project is going to remain in operation indefinitely. It is equally plain as a physical fact that the beneficiaries will continue to be the owners of lands within the Ivanhoe, Madera, and other irrigation districts which are supplied by the large facilities like the Friant-Kern Canal and the Madera Canal. The only real possibility is, therefore, that the rates would be increased in a renewal contract. But these rates are necessarily limited by the ability of the farmers to pay. See App., *infra*, pp. 71–73. And the very

fact that a rate within the landowners' ability to pay can be reached only after deducting amounts for federal contributions to navigation, etc., by securing proceeds from power and other sources, and by the tremendous bounty represented by the waiver of interest (*supra*, p. 55), shows that there is little possibility of exceeding a rate which the United States could justly demand in the "arms length" transaction referred to by the court below (AJS. 36).

Repayment of construction costs has been a condition precedent to the permanent attachment to the lands within a reclamation project of the right to use project water thereon since the Reclamation Act was enacted in 1902, Section 5, Act of June 17, 1902; cf. Section 2, Act of May 15, 1922, 42 Stat. 541, 542. And we know of nothing which prohibits postponement of definitive settlement of these matters until the end of the 40-year contract period. As to the suggestion that Congress will arbitrarily ignore such rights, we think Representative Gore gave the appropriate response in 1947 when he said (Hearings before Subcommittee of House Committee on Appropriations on H. R. 3123, 80th Cong., 1st Sess., p. 737):

> I cannot conceive of a Government that would spend $384,000,000 building one of the great reclamation-irrigation projects of the world and suddenly because some evil agent of Government had gotten into a bureau, turning its back upon a people who had been benefited by it and who in turn had greatly benefited the Nation by production of food stuffs and wealth. I just do not conceive of the United States as being that kind. If that is all the fears are

based upon in signing these 9 (e) contracts, then I, as one member of this committee do not have too much sympathy with those apprehensions.

Finally, it should be noted that there is nothing in the 9 (e) form of contract that purports to deny to the District or the water users any rights they might have or acquire because of payments over the years, or otherwise.

D. IT IS UNNECESSARY TO DECIDE ISSUES OF TITLE TO WATER RIGHTS

1. The California Supreme Court apparently believed that its theory as to the state and private ownership of the waters coming from the federal projects (see *supra,* pp. 21–22) somehow altered the Federal Government's authority to impose the challenged conditions of the contracts. This conclusion necessarily involves a basic misconception of the source of the Federal Government's power which we have been discussing.

Regardless of what water rights the United States may have in the matter, it is indisputable that the Federal Government has supplied enormous funds for the project and that it has the absolute ownership of the dam site the United States bought from the Madera District (*supra,* pp. 16–17), of the Friant Dam it constructed thereon, of the Shasta Dam, and of all the other water supply structures. That ownership, as well as the federal power to condition its bounty, is sufficient, in itself, to support the various contractual requirements—whatever the property interests (under state or federal law) in the right to use the water. Even if the United States had no rights in the water, the Federal Government can validly limit use of

its monies and its project structures on compliance with reasonable conditions. For this reason, the Secretary of the Interior and the Attorney General of California were plainly right in concluding that there is no occasion in this case to adjudicate questions of title to water rights. Whatever view is taken of such rights, the power of Congress to impose the disputed contractual limitations is plain.

2. In any event, we wish to make it plain that we deny that the rights to water held by the United States are subject to the trust described by the majority opinion below.[25] The incidents of the alleged "trust", or rather the incidents which it does not have, the matters that it does not cover (see, *e. g.*, listing at AJS 35–36) and the rights of *cestuis que trust* which are not vested (see, *e. g.*, AJS 146–150 where the court below reversed the trial court's holding in the *Madera* case that the owners of excluded lands had a vested right to a pro rata share of the project water), demonstrate that, while purporting to declare a "trust," the opinion below is really declaring the subservience of the United States to all state regulations, as did the trial court in the *Ivanhoe* and *Madera* cases (see *supra*, pp. 19–20).[26]

Many of the rights acquired by the United States for the Central Valley Project were acquired from

[25] Since the court below recognized the power of the United States to acquire the water rights necessary to execute the project, cases such as *United States* v. *Burnison*, 339 U. S. 87, are irrelevant here.

[26] Of course, there is no basis for the holding of the trial court in the *Ivanhoe* and *Madera* cases that the United States, in undertaking the Central Valley Project, had declared itself to be the trustee of any express trust so as to preclude application of the Reclamation Act or other directions of Congress.

private individuals or corporations either by purchase, *e. g.*, as from Miller & Lux, or under the power of eminent domain, as in the *Gerlach* case. The United States paid for beneficial water rights unencumbered by any trust, since the trust declared by the court below does not make private appropriators trustees for other water users. To construct a so-called "trust" upon property of the United States absolutely acquired is merely to give a more palatable name to what is actually invalid state regulation.[27] Put otherwise, the United States is, at least as to those water rights acquired from private interests either by purchase or condemnation, the owner of the water rights without restriction. Accordingly, the action of the court below in including these rights within the "trust" necessarily reflects that court's view that Congress intended to subject federal property owned absolutely to state regulations. We have shown that there is no basis for such a view (*supra*, pp. 34–48).

There is another fundamental reason why the trust asserted by the court below cannot exist. To begin with, waters in California were vested in the United States along with the rest of the public domain, except insofar as express grants had been made by Spain or Mexico.[28] In recognition of this fact, the courts of California, including the majority in the instant case, have never "held that the right to appropriate waters

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[27] Such regulatory power is, of course, vested exclusively in Congress. *Clackamas County* v. *McKay*, 226 F. 2d 343 (C. A. D. C.), certiorari denied, 350 U. S. 904.

[28] We are not concerned at this point with the rights that the state may acquire as an appropriator on an equality with private appropriators or the rights it may own as owner of riparian lands.

on the public lands of the United States was derived directly from the state of California as the owner of innavigable streams and their beds", *Lux* v. *Haggin*, 69 Cal. 255, 338–339, 4 Pac. 919, 10 Pac. 674, 721. In a series of federal statutes culminating in the Desert Land Act of 1877, 19 Stat. 377, waters upon the public domain were "severed", the United States authorized the acquisition by appropriation of rights to use such water, and patents to public lands carried rights to use the waters thereon only as fixed by local law. "As the owner of the public domain, the government possessed the power to dispose of land and water thereon together, or to dispose of them separately." *California Oregon Power Co.* v. *Beaver Portland Cement Co.*, 295 U. S. 142, 162. These authorizations of appropriations pursuant to state law were not all-embracing but are subject to qualification and reservation by the United States. *Federal Power Commission* v. *Oregon*, 349 U. S. 435, 438.[29]

As in *Nebraska* v. *Wyoming*, 325 U. S. 589, 611–616, it is unnecessary here to determine who has the title to unappropriated water.[30] But this much, we think, is

[29] See also *Winters* v. *United States*, 207 U. S. 564, 577; *United States* v. *Walker River Irrigation District*, 104 F. 2d 334, 336 (C. A. 9); *United States* v. *Ahtanum Irrigation District*, 236 F. 2d 321 (C. A. 9), certiorari denied, 352 U. S. 988; *United States* v. *Rio Grande Irrigation Company*, 174 U. S. 690, 703.

[30] The fact should be made clear that while the Central Valley Project will not irrigate large quantities of federally-owned lands—most of the water being to supplement present supplies for lands already in private ownership—much of the water so used is derived from federal land. Thus, the Trinity River basin lies mostly within either the Trinity or the Shasta National Forest. H. Doc. No. 416, 84th Cong., 2d Sess., p. 858.

clear. Title to the unappropriated waters, including those in navigable streams,[31] is, as a matter of federal law, not vested in the State of California, and hence there is no corpus upon which to base the purported trust. The authorization to California and the other western states to determine under their law a procedure by which rights to the use of water could be acquired was not a grant to those states of any title to the waters, and certainly it was not intended to frustrate federal projects such as are here involved. As we have already said, further discussion of title to unappropriated waters should, we believe, be reserved until that issue is properly presented for adjudication in a case to which the United States is party.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgments below should be reversed.

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MARCH 1958.

[31] The Desert Land Act applies only to nonnavigable streams.

APPENDIX

A. SYNOPSIS OF THE HISTORY OF THE 9 (e) REPAYMENT PROVISION

The original Reclamation Act (Act of June 17, 1902, 32 Stat. 388) provided for the payment of construction costs in ten annual installments. Increased costs made necessary an extension of time to 20 years. Act of August 13, 1914, 38 Stat. 686, 687. The schedule of payments under that Act called for two percent of the construction charge for the first four years, four percent for the next two years, and six percent for the remaining 14 years. Difficulties were experienced under these provisions and special relief acts were passed granting relief in the payment of charges becoming due in 1922, 1923 and 1924. H. Doc. 673, 75th Cong., 3rd Sess., pp. 12, 25. In the latter year, the act which became known as the Fact Finders' Act of December 5, 1924, 43 Stat. 672, 702, was passed which provided for the payment of construction charges computed at five percent of the average gross annual crop value for the ten years last past. Thus contracts under the Fact Finders' Act had no definite period in which repayment had to be made.[1] Difficulties connected with the administration of this provision resulted in its repeal two years later. Omnibus Adjustment Act of May 25, 1926, 44 Stat. 636, 650. This 1926

[1] This is spelled out in the hearings held on H. R. 6773, 76th Cong., 1st Sess., the predecessor bill to H. R. 6984, 76th Cong., 1st Sess., which became the Reclamation Project Act of 1939, 53 Stat. 1187. *E. g.*, pp. 50, 83, 100, Hearings, House Committee on Irrigation and Reclamation on H. R. 6773.

Act authorized the Secretary of the Interior to execute repayment contracts extending over a period of not to exceed 40 years.

Projects became more extensive and far more costly. On many projects repayment difficulties were experienced to such an extent that, in addition to granting moratoria on repayment obligations, the Congress provided for the appointment of a special repayment commission to devise a more equitable and flexible permanent plan for the repayment of the construction costs of Federal reclamation projects. Act of August 21, 1937, 50 Stat. 737. That commission was expressly charged with investigating the financial, economic, and other conditions of the various reclamation projects, and to recommend to Congress (*ibid.* at pp. 737–738):

> the best, most feasible, and practicable comprehensive permanent plan for such water-right payments with due consideration for the development and carrying on of the reclamation program of the United States, and having particularly in mind the probable ability of such water users, districts, associations, or other reclamation organizations to meet such water-right charges regularly and fully from year to year during periods of prosperity and good prices for agriculture products as well as during periods of decline in agricultural income and unsatisfactory conditions of agriculture.

This commission reported to the Congress on May 18, 1938, and its report was printed as House Document No. 673, 75th Congress, 3rd session. Some 72 hearings were held; 30 conferences were held with Governors of States in which reclamation projects are located, or their representatives, and with officials and

staffs of state agricultural colleges in the reclamation area. *Ibid.*, p. 2.[2]

It was reported to the Senate that H. R. 6984, 76th Cong., 1st Sess., which, as noted, became the Reclamation Project Act of 1939 (53 Stat. 1127), was the product of the investigation and report on repayment problems by the above-discussed Repayment Commission as well as of 37 years experience in the irrigation and reclamation of arid and semiarid lands in the west under the basic Reclamation Act of 1902 (32 Stat. 388). S. Rept. No. 758, 76th Cong. 1st Sess., p. 2. Similarly, it was reported in the House of Representatives with reference to the recommendations of the Repayment Commission: "These recommendations have served as the basis for the bill under consideration, which has been most carefully drafted in order that the interests of the United States and the water users alike might be safeguarded." H. Rept. No. 995, 76th Cong., 1st Sess., p. 2.

The need for more flexibility in repayment methods was noted by the Repayment Commission in the following words (H. Doc. No. 673, 75th Cong., 2d Sess., p. 17):

> Difficulties of repayment are increased by detailed and inflexible contracts whose terms meticulously attempt to protect the Government against loss, and require the individual water user or his organization to assume the risks and

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[2] In this connection, the report notes that hearings were held in California (*ibid.* pp. 3–4) and under the heading "Conference", the report lists (*ibid.*, p. 5):

"California:

With former President Hoover.

With California State representatives, at Sacramento.

With representatives of the University of California.

With President Wilbur of Stanford University.

With officials of the Office of Indian Affairs."

losses due to natural causes beyond human control, and the effects of uncertainties of production and of marketing, with no provision for substantial adjustment except through appeals to Congress.

Frequent appeals to Congress for revision of these contracts for extension of time for repayment, and changes in repayment of construction costs, demonstrate that the rigorous detailed contract considered necessary for construction simply does not and cannot be made to apply to repayment, dependent upon agricultural production. Repayment contracts should be written without involved legal phraseology and in language the farmer understands.

The report of the Repayment Commission noted expressly that (*ibid.*, p. 33): "There are several projects that cannot possibly repay construction charges within the 40-year limit prescribed by the Adjustment Act and must be given a more liberal schedule of repayment." Various new plans for repayment which had been proposed are then discussed in that report, including one under which "the time for repayment would extend far beyond the 40-year period" (*ibid.*), "sliding scale" repayment plans and other plans (*ibid.*, pp. 34–35).

Among the recommendations of the Repayment Commission was the following (H. Doc. No. 673, 75th Cong., 2d Sess., p. 36):

> (d) Fix a plan for the repayment of construction charges, either upon an installment basis per acre or per acre-foot of water delivered, or based upon ability to pay, as indicated and regulated by the average gross returns for lands of a project or a division of a project, on the basis of the percentage of the average gross acre income for the year nearest the date of payment for which the crop returns are avail-

able, scaling up or down from a basic percentage of 5 percent of the average gross acre income at normal value with an increase at the rate of one-twenty-fifth of 1 percent for each dollar of average annual production above the normal base and a decrease at the rate of one-third of 1 percent for each dollar of average annual production below such normal base. The normal base and the installments may vary as to projects or divisions of a project. The normal base should be subject to revision from time to time by boards of adjustment appointed by the Secretary.

Neither of these alternatives require repayment to be completed within a specified number of years. It was with this background that the so-called "9 (e)" provision was enacted, as noted in both the Senate and House reports on the bill which became the Reclamation Project Act of 1939 (*supra*, p. 72). That the Act permitted and contemplated contracts of over 40 years payout period was repeatedly spelled out during the hearings of the House Committee on Irrigation and Reclamation on H. R. 6773, 76th Cong., 1st Sess. (see pp. 21, 23–24, 50, 74, 83, 100).

B. LEGISLATIVE AND ADMINISTRATIVE MATERIALS RELATING TO THE CENTRAL VALLEY PROJECT

In gathering these materials, we have not attempted to collect all the legislation on the subject. This portion of the appendix is limited to the relatively recent annual reports of the Secretary of the Interior and congressional appropriations for the Central Valley Project, since these materials have the most direct bearing on congressional ratification of the contracts involved in the present litigation.

These materials are grouped as the Congress considered them during the calendar year, *e. g.*, in 1957

the first session of the Eighty-Fifth Congress considered the Annual Report of the Secretary of the Interior for 1956 while passing the Bureau of Reclamation appropriation for 1958.

In addition, we have included a summary of four bills, the history of which conclusively shows the intent of Congress to maintain the 160-acre limitation as a basic provision of the federal reclamation program.

1944

In the second session of the Seventy-Eighth Congress, a committee amendment to H. R. 3961, a Rivers and Harbors bill, was introduced on the floor of the House for the purpose of exempting lands in the Central Valley Project from the 160-acre limitation. This was the so-called Elliott rider. See 90 Cong. Rec. 2765, 2921–2924. The bill, including the Elliott rider, passed the House, 90 Cong. Rec. 2928, but the Senate Committee on Commerce reported the bill with an amendment striking out the Elliott rider. The Senate approved that amendment. 90 Cong. Rec. 8674–8675, 8875. In this form the Senate passed the bill. 90 Cong. Rec. 9247.

The relevant hearings on the Elliott rider are in the Hearings before a Subcommittee of the Senate Committee on Commerce on H. R. 3961, Parts 4 and 5, 78th Cong., 2d Sess., pp. 532, 536–537, 540–542, 544, 581–582, 583–584, 593, 651, 659, and 758–761.

In the House-Senate conference committee, the 160-acre exemption was restored, 90 Cong. Rec. 9478–9485, but the Senate rejected the conference report due to that inclusion, and requested a further conference. 90 Cong. Rec. 9493–9499. In the House, Representative Elliott blocked agreement to the further conference requested by the Senate, 90 Cong. Rec. 9555, and

that was the last action taken on H. R. 3961 in that session of Congress.

Early in 1945, during the first session of the Seventy-Ninth Congress, S. 35 was passed. This bill was similar to H. R. 3961, 78th Cong., 2d Sess., but did not include several controversial items, *e. g.*, exemption of the Central Valley Project from the 160-acre limitation. See S. Rept. No. 22, 79th Cong., 1st Sess., pp. 1–2; H. Rept. No. 63, 79th Cong., 1st Sess., pp. 1–2; and 91 Cong. Rec. 531–532, 1335, and 1337.

1945

Discussion of the appropriation for the Central Valley Project is found in H. Rept. No. 437, 79th Cong., 1st Sess., pp. 17–18; S. Rept., No. 316, 79th Cong., 1st Sess., pp. 16–17; and H. Conf. Rept. No. 789, 79th Cong., 1st Sess., p. 22. Hearings on the 1946 appropriation bill are reported in the Hearings before the Subcommittee of the House Committee on Appropriations on the Interior Department Appropriation Bill for 1946, 79th Cong., 1st Sess., 1043–1049, 1196–1214, and the Hearings before a Subcommittee of the Senate Committee on Appropriations on H. R. 3024, 79th Cong., 1st Sess., 913–914, 1028–1033. In the Senate hearings, at pp. 1030–1031, there is a discussion of the failure of the Elliott rider to the 1944 Rivers and Harbors Act to pass the Congress, and it is recognized that absent such specific Congressional action the 160-acre limitation is required in irrigation contracts with landowners benefiting from the Central Valley Project.

1946

The appropriation for the Central Valley Project is reported in H. Rept. No. 1984, 79th Cong., 2d Sess., p. 18; S. Rept. No. 1434, 79th Cong., 2d Sess., p. 26;

and H. Conf. Rept. No. 2329, 79th Cong., 2d Sess., p. 28. Hearings relating to the Central Valley Project are found in the Hearings before the Subcommittee of the House Committee on Appropriations on the Interior Department Appropriation Bill for 1947, Part 2, 79th Cong., 2d Sess., pp. 315–355, and the Hearings before a Subcommittee of the Senate Committee on Appropriations on H. R. 6335, 79th Cong., 2d Sess., pp. 778–780, 794–795. At p. 483 of the House hearings, is a colloquy expressing the view that it is necessary for the Bureau of Reclamation faithfully to prosecute repayment contracts with the various water districts with which it contracts. In the debates, at 92 Cong. Rec. 5016, Congressman Elliott, who supported an earlier unsuccessful attempt to exempt the Central Valley Project from the 160-acre limitation, recognizes that the 160-acre limitation is the law.

1947

During fiscal year 1946, the first of the Central Valley Project water contracts was executed, and negotiations with additional water districts were carried on. Excess land limitations were fully incorporated in the Central Valley contract form. Due to Congressional interest in the excess land policy, a survey of the extent of excess land holdings on Federal reclamation projects was completed. Rep. Sec. Int. (1946), 62–63, 89–90.

The Central Valley Project appropriation is reported in H. Rept. No. 279, 80th Cong., 1st Sess., p. 19; S. Rept. No. 278, 80th Cong., 1st Sess., pp. 5, 23; and H. Conf. Rept. No. 1013, 80th Cong., 1st Sess., p. 4. Hearings relating to the Central Valley Project are found in the Hearings before the Subcommittee of the House Committee on Appropriations on the Interior Department Appropriation Bill for 1948,

Part 3, 80th Cong., 1st Sess., pp. 721–742, 775–776, and the Hearings before a Subcommittee of the Senate Committee on Appropriations on H. R. 3123, Part 2, 80th Cong., 1st Sess., pp. 1062–1067, 1111–1112. Discussion of the 9 (e) type contract occurs at pp. 208–211, 734–738, and 771–773 of the House hearings.

S. 912, introduced in the first session of the Eightieth Congress by the senators from California, Texas, and Colorado, had as its purpose the exemption of the Central Valley Project in California, plus certain projects in Colorado and Texas, from the 160-acre limitation of the federal reclamation law. The bill was referred to the Senate Committee on Public Lands, 93 Cong. Rec. 2108, but was never reported out of that committee. Extensive hearings of over 1,300 pages were held on this bill, and are in the Hearings before a Subcommittee of the Senate Committee on Public Lands on S. 912, 80th Cong., 1st Sess.

1948

Significant features of the year included the development of a repayment contract utilizing the combined authority of sections 9 (d) and 9 (e) of the 1939 Reclamation Act, initiation of a program to assure compliance with acreage limitations, and the introduction of S. 912 to exempt Central Valley Project lands from the 160-acre limitation. Rep. Sec. Int. (1947), 100, 102–103, 120.

The appropriation for the Central Valley Project is reported in H. Rept. No. 2038, 80th Cong., 2d Sess. pp. 24, 27–28, and S. Rept. No. 1609, 80th Cong. 2d Sess., pp. 6, 19, 21. Recognition of the fact that the Bureau of Reclamation is required to include the 160-acre limitation in irrigation contracts is found in testimony at the Hearings before a Subcommittee of the Senate Committee on Appropriations on H. R.

6705, 80th Cong., 2d Sess., pp. 941–942. Justification for the Central Valley Project appropriation is reported at pp. 910–913 of the Senate hearings. The House hearings are found in the Hearings before the Subcommittee of the House Committee on Appropriations on the Interior Department Appropriation Bill for 1949, Part 3, 80th Cong., 2d Sess., pp. 981–985, 1015, 1035–1041, 1212–1216. At p. 1015, the discussion recognizes the 160-acre limitation, and at p. 981, the use of 9 (e) type contracts. In the debates in the House, the existing 160-acre limitation was recognized, and the policy behind it upheld. 94 Cong. Rec. 6621.

1949

Water contracts were negotiated under sections 9 (d), 9 (e), and a combination of both, under the 1939 Reclamation Project Act. Some specific contracts executed or under negotiation in the Central Valley Project are reported. A bill which would have amended section 9 (e) and contracts executed thereunder failed to pass Congress. It was noted that some fifty suits involving water rights in the Central Valley Project were pending in various courts. Rep. Sec. Int. (1948), 76, 115.

The appropriation for the Central Valley and Santa Barbara Projects are reported in H. Rept. No. 324, 81st Cong., 1st Sess., pp. 13–14, and S. Rept. No. 661, 81st Cong., 1st Sess., pp. 10–12. Most of the material relevant to the Central Valley Project discussed in the hearings involved the power aspects of the project. The irrigation aspect was discussed in the Hearings before the Subcommittee of the House Committee on Appropriations on the Interior Department Appropriation Bill for 1950, Part 2, 81st Cong., 1st Sess., pp. 278–283. The Santa Barbara Project discussion is contained at pp. 179–189 of the House hearings, and

in the Hearings before a Subcommittee of the Senate Committee on Appropriations on H. R. 3838, Part 1, pp. 1092–1115, and Part 2, pp. 2406–2430, 2442–2443.

1950

During fiscal year 1949, fifteen new repayment contracts were executed under sections 9 (d) and 9 (e) of the 1939 Reclamation Project Act with various water users organizations including units of the Central Valley Project. Introduction of another bill in Congress to amend sections 9 (d) and 9 (e) is discussed, as is pending litigation involving the Central Valley Project. Rep. Sec. Int. (1949), 35–36, 75–77, 91.

The Central Valley Project appropriation is reported in H. Rept. No. 1797, 81st Cong., 2d Sess., pp. 170–171, and S. Rept. No. 1941, 81st Cong., 2d Sess., pp. 142–144. The appropriation is discussed in the Hearings before the Subcommittee of the House Committee on Appropriations on the Interior Department Appropriations for 1951, Part 3, 81st Cong., 2d Sess., pp. 664, 696-725, and the Hearings before a Subcommittee of the Senate Committee on Appropriations on Interior Department Appropriations for 1951, Part 1, 81st Cong., 2d Sess., pp. 802–830. In the Senate hearings, at pp. 823–824, the committee members were informed that the Bureau of Reclamation was negotiating and contracting on the basis of the 160-acre limitation, and that the irrigation districts were willing to accept such limitation.

In relation to the Santa Barbara County Water Agency contract, see pp. 1065–1100 of the Senate hearings. A summary of the provisions of that contract is at pp. 1094–1095, and mention of the litigation determining the validity of the contract at pp. 1075, 1077 and 1081. Also see pp. 925–932 of the House hearings.

Page

Its Administrative Treatment 24

Its Judicial Treatment 26

Further Congressional Action 31

III. This appeal actually seeks to create in the field of control, appropriation, use and distribution of water used in irrigation throughout the Reclamation States a new and Federal system of water rights to compete with the various existing State systems 32

IV. The equities in the history of the Central Valley Project all support the judgment 33

Conclusion 39

Appendix

1951

Repayment and water service contracts were negotiated and executed under the 9 (d) and 9 (e) sections of the 1939 Reclamation Project Act with a number of organizations including the Ivanhoe irrigation district and the Santa Barbara County water agency. Rep. Sec. Int. (1950), 39, 98.

The appropriation for the Central Valley Project is discussed in H. Rept. No. 339, 82d Cong., 1st Sess., pp. 10–12; S. Rept. No. 499, 82d Cong., 1st Sess., pp. 17–18; and H. Conf. Rept. No. 775, 82d Cong., 1st Sess., p. 9. The relevant testimony at the hearings is in the Hearings before the Subcommittee of the House Committee on Appropriations on Interior Department Appropriations for 1952, Part 1, 82d Cong., 1st Sess., pp. 312–313, 316–317, 491–498, and the Hearings before a Subcommittee of the Senate Committee on Appropriations on H. R. 3790, Part 1, 82d Cong., 1st Sess., pp. 533–538. Discussion of the *Ivanhoe* litigation in the Superior Court of Tulare County, California, is contained in the Senate hearings at pp. 533–536.

1952

Eleven of twenty new water service and repayment contracts were executed with Central Valley Project districts, including the Madera irrigation district. Five recordable contracts providing for delivery of project water to excess lands were also executed during the past year. In the Eighty-first Congress, the Central Valley Project was reauthorized to include certain irrigation canals as an integrated part of the project. Rep. Sec. Int. (1951), 20, 40, 93, 109.

The committee reports on the appropriation for the Central Valley Project are in H. Rept. No. 1628, 82d Cong., 2d Sess., pp. 11–12; S. Rept. No. 1803, 82d

TABLE OF AUTHORITIES CITED

Cases	Pages
Allen v. Hussey, 101 C.A. 2d 457, 225 P.2d 674 (1951)	35
District of Columbia v. John R. Thompson Co., 346 U.S. 100, 73 S. Ct. 1007	36
Flournoy v. Wiener, 321 U.S. 253	10
Guessefeldt v. McGrath, 342 U.S. 308, 72 S. Ct. 338, 91 L. Ed. 342	21
Hall v. Superior Court, 198 Cal. 373, 245 P. 813 (1925)	35
Herb v. Pitcairn, 324 U.S. 117, (1945)	9
Ickes v. Fox, 300 U.S. 82, 57 S. Ct. 412 (1937)	27
Inyo Consolidated Water Co. v. Jess, 161 Cal. 516, 119 P. 534	16
Lindsay-Strathmore Irr. Dist. v. Wutchumma Water Co., 111 CA 688, 296 P 983 (1931)	35
Merchants National Bank v. Escondido Irr. Dist., 144 Cal. 329 (1904)	35
Nebraska v. Wyoming, 325 U.S. 589, 65 S. Ct. 1332 (1945)	28, 32
Tulare Irr. Dist. v. Collins, 154 Cal. 440, 97 P. 1124 (1908)	35
United States v. Gerlach Livestock Co., 339 U.S. 725c	25, 29, 31

Statutes	
Omnibus Adjustment Act of 1926 (44 Stat. 646, 43 U.S. D.A. 423c:	
Section 46	16, 18, 21, 24
Section 47	21
Section 48	21
Reclamation Act of 1902:	
Section 5	18, 19
Section 8	5, and throughout.

Cong., 2d Sess., pp. 9–11; and H. Conf. Rept. No. 2451, 82d Cong., 2d Sess., pp. 7–8. The repayment contract program is discussed in the Hearings before the Subcommittee of the House Committee on Appropriations on the Interior Department Appropriations for 1953, Part 3, 82d Cong., 2d Sess., pp. 1108–1115. Justification for the Central Valley Project appropriation is at pp. 860–876, 1153–1155 of the House hearings. The relevant Senate hearings are in the Hearings before a Subcommittee of the Senate Committee on Appropriations on H. R. 7176, 82d Cong., 2d Sess., pp. 988–1006. Justification for the Cachuma project and discussion of the 9 (e) contract with the Santa Barbara County Water Agency is at pp. 854–859 of the House hearings.

1953

During fiscal year 1952, repayment contracts having a face value of over $90 million were entered into with twelve irrigation districts. In the Central Valley Project some repayment and water service contracts were executed, as well as fifteen contracts covering excess lands under the terms of the reclamation law. The Secretary's report directed attention to various litigation, including the *Ivanhoe* and *Madera* cases before the Superior Court of California. Rep. Sec. Int. (1952), 28, 111, 123.

The appropriation for the Central Valley Project is discussed in H. Rept. No. 314, 83d Cong., 1st Sess., pp. 11, 14, 16; S. Rept. No. 445, 83d Cong., 1st Sess., pp. 13–14; and H. Conf. Rept. No. 947, 83d Cong., 1st Sess., p. 9. The *Ivanhoe* litigation is discussed in the Hearings before the subcommittee of the House Committee on Appropriations on Interior Department Appropriations for 1954, Part 3, 83d Cong., 1st Sess., pp. 1194–1203, and the Hearings before a Subcommittee of the Senate Committee on Appropriations

on H. R. 4828, Part 2, 83d Cong., 1st Sess., pp. 1845–1848. Other aspects of the Central Valley Project are in the House hearings at 1173–1194. Justification for the Cachuma Project in Santa Barbara County is at pp. 1162–1172 of the House hearings.

1954

Repayment contracts having a face value of over $85 million were executed with over fifty irrigation districts. In addition, water service contracts were entered into with various irrigation districts. Feasibility reports on two units of the Central Valley project were submitted to the Congress. The litigation section of the Secretary's report mentions certain Central Valley Project cases. Rep. Sec. Int. (1953), 165, 179, 207.

The Central Valley Project appropriation is reported in H. Rept. No. 1460, 83d Cong., 2d Sess., pp. 10–11; S. Rept. No. 1506, 83d Cong., 2d Sess., pp. 15, 17; and H. Conf. Rept. No. 1926, 83d Cong., 2d Sess., pp. 10–11. The appropriation hearings are in the Hearings before the Subcommittee of the House Committee on Appropriations on Interior Department Appropriations for 1955, Part 2, 83d Cong., 2d Sess., pp. 881–901, and the Hearings before a Subcommittee of the Senate Committee on Appropriations on H. R. 8680, 83d Cong., 2d Sess., pp. 1000–1015, 1468–1474. Mention of the 9 (e) contracts with the Santa Barbara County Water Agency is made at pp. 870–880 of the House hearings.

H. R. 2235 was introduced in the first session of the Eighty-third Congress for the purpose of authorizing the construction of a project at Santa Maria, California. H. Rept. No. 1098, 83d Cong., 2d Sess. and S. Rept. No. 1789, 83d Cong., 2d Sess., recommended the passage of the bill, and further recom-

mended that, due to the unusual physical aspects of this project, the lands included therein be exempted from the 160-acre limitation. The exemption of this project was carefully considered. See Hearings before the Subcommittee on Irrigation and Reclamation of the House Committee on Interior and Insular Affairs on H. R. 2235 and H. R. 2259, 83d Cong., 1st Sess., pp. 57–58, 66–67, 79–80, 84. The debates in the House and Senate also reveal careful scrutiny of this exception to the usual federal reclamation law, and the bill passed the Congress only after affirmation of the basic validity of the 160-acre limitation and recognition of the unusual aspects of this particular project. See 100 Cong. Rec. 1144–1146, 1149–1150, 14248–14250, 15007–15008, 15019–15024. The bill was enacted into law as the Act of September 3, 1954, 68 Stat. 1190.

1955

Repayment contracts were entered into with ten irrigation districts, and sixty-seven water service contracts were executed during fiscal year 1954. The validation proceedings involving the Ivanhoe and Madera irrigation districts and the Santa Barbara County water agency were in the appeal stage before the Supreme Court of California. Rep. Sec. Int. (1954), 50, 82.

The appropriation for the Central Valley Project is reported in H. Rept. No. 747, 84th Cong., 1st Sess., pp. 8–9; S. Rept. No. 700, 84th Cong., 1st Sess., pp. 8–9; and H. Conf. Rept. No. 1085, 84th Cong., 1st Sess., p. 5. Relevant portions of the hearings are in the Hearings before the Subcommittee of the House Committee on Appropriations on Public Works Appropriations for 1956, Western Section, Part 1, 84th Cong., 1st Sess., pp. 2–16, 40–55, and the Hearings before the Subcommittee of the Senate Committee on

Appropriations on H. R. 6766, 84th Cong., 1st Sess., pp.74–81, 332–334. Discussion of the contract with the Santa Barbara County Water Agency occurs at pp. 109–114 of the House hearings.

1956

During fiscal year 1955, contracts were executed with nine irrigation districts for repayment of the cost of new irrigation works. Twenty six water users' organizations signed contracts for the purchase of storage water rights or for interim and long-term water service. The contested validation proceedings involving the Ivanhoe and Madera irrigation districts, and the Santa Barbara County water agency, were on appeal, pending decision in the California Supreme Court. Rep. Sec. Int. (1955), 53, 90-91.

The Central Valley Project appropriation is reported in H. Rept. No. 2181, 84th Cong., 2d Sess., p. 5; S. Rept. No. 2169, 84th Cong., 2d Sess., pp. 4–6; and H. Conf. Rept. No. 2413, 84th Cong., 2d Sess., p. 4. Relevant portions of the hearings are in the Hearings before the Subcommittee of the House Committee on Appropriations on Public Works Appropriations for 1957, Reclamation Volume, 84th Cong., 2d Sess., pp. 988–1013, and the Hearings before the Subcommittee of the Senate Committee on Appropriations on H. R. 11319, Reclamation Volume, 84th Cong., 2d Sess., pp. 135–147.

H. R. 6643, introduced in the first session of the Eighty-fourth Congress, proposed to amend the reclamation laws to provide that excess lands acquired by foreclosure or inheritance could temporarily receive water from federal irrigation projects for a period of five years.

Both the House and Senate Committees on Interior and Insular Affairs reported the bill favorably, ex-

plaining in their reports that the legislation would permit compliance with the basic principle of the acreage limitation provisions of reclamation law without impairing the lending value of lands in reclamation projects. H. Rept. No. 1748, 84th Cong., 2d Sess.; S. Rept. No. 2378, 84th Cong., 2d Sess. The bill passed the House and Senate without debate, 102 Cong. Rec. 2901, 11541, and was enacted as the Act of July 11, 1956, 70 Stat. 524.

1957

Numerous repayment contracts were executed, including one with the Santa Maria unit of the Santa Barbara Project. Congress enacted a project authorization to cover a sub-unit of the Central Valley Project. Rep. Sec. Int. (1956), 17, 61.

The appropriation for the Central Valley Project is reported in H. Rept. No. 552, 85th Cong., 1st Sess., pp. 16–17; S. Rept. No. 609, 85th Cong., 1st Sess., pp. 32–33; and H. Conf. Rept. No. 1049, 85th Cong., 1st Sess., p. 12. The relevant hearings are in the Hearings before the Subcommittee of the House Committee on Appropriations on Public Works Appropriations for 1958, Part 1, 85th Cong., 1st Sess., pp. 436–459, and the Hearings before the Subcommittee of the Senate Committee on Appropriations on H. R. 8090, Reclamation Volume, 85th Cong., 1st Sess., pp. 254–262. The *Ivanhoe* litigation is discussed at pp. 261–262 of the Senate hearings, and at pp. 455–456 of the House hearings. On the floor of the House, it was recognized that the 160-acre limitation must be included in all Bureau of Reclamation contracts. 103 Cong. Rec. 8721.

1958

Although numerous repayment contracts were executed with irrigation districts during fiscal year 1957,

the *Ivanhoe* litigation was affecting further contract negotiations. During the Eighty-fourth Congress, bills were passed removing objections to the 9 (e) type contract widely used on the Central Valley Project, and clarifying the answers to problems arising out of the acquisition of excess lands by foreclosure or inheritance. Rep. Sec. Int. (1957), 41–42, 88.

C. APPROPRIATIONS FOR THE BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Act of July 3, 1945	59 Stat. 318, 338
Act of July 1, 1946	60 Stat. 348, 363
Act of July 25, 1947	61 Stat. 460, 472
Act of June 29, 1948	62 Stat. 1112, 1124
Act of October 12, 1949	63 Stat. 765, 778
Act of September 6, 1950	64 Stat. 595, 685
Act of August 31, 1951	65 Stat. 248, 254
Act of July 9, 1952	66 Stat. 445, 450
Act of July 31, 1953	67 Stat. 261, 265
Act of July 1, 1954	68 Stat. 361, 365
Act of July 15, 1955	69 Stat. 354, 356
Act of July 2, 1956	70 Stat. 474, 475
Act of August 26, 1957	71 Stat. 416, 419

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THE JUDGMENTS

The trial court, on February 27, 1953, ruled that the appellee McCracken had a vested right to have each and every acre of his land within the appellant District supplied with water on the same terms and conditions as every other acre within the District "without discrimination by reason of the extent of his holdings of land." The Supreme Court of California affirmed this ruling on January 24, 1957.

SUMMARY OF ARGUMENT

I. The judgment appealed from rests on adequate non-federal grounds and the appeal does not present a substantial federal question.

The Supreme Court of the Sta of California in the judgment appealed from carefully and meticulously set forth the bases of its judgment and analysis of these bases clearly shows that each and every one of those bases was of an exclusive State character without any roots in Federal law. To make its finding, and the bases of its decision crystal clear, the Court specifically and in so many words excluded from service to its judgment all other bases which had been urged upon it having any connections with Federal law.

II. The judgment appealed from finds ample support in Federal law.

Section 8 of the Reclamation Act of 1902 requires all Reclamation activities to conform to State law and to respect all vested water rights. The Supreme Court of the State of California, the final arbiter on such a question, found appellee to have a right to irrigation water vested under the California Constitution, statutes and decisional law, beyond the reach of the provisions of the proposed contract. Section 8 of the original Act with its mandate to respect vested

water rights in the states is still a cornerstone of Reclamation operations under legislative, judicial and executive interpretations. This respect for vested rights has never been qualified by inquiry into the nature or extent of such rights. It has always been sufficient that the right be vested. The present appeal represents an effort to curtail vested rights under California water law to the point of extinction. The argument that Section 8 of the original Reclamation Act was repealed *pro tanto* by indirect implication is refuted by legislative, judicial and administrative action.

III. A successful appeal in this case would permit the creation of a new and Federal system of water rights in the various Reclamation States.

The contract proposed for validation is in effect an effort to initiate a new and Federal system for the control, appropriation, use, and distribution of water for irrigation in the Western Reclamation States to compete with existing systems in the various states. The new scheme would have its own methods of control, appropriation, use and distribution and would not vest any water right or make it appurtenant to the land irrigated. It would be completely independent of State laws.

IV. The equities in the history of the Central Valley Project all support the judgment.

These equities are:

a. The nature and extent of the water right of a landowner in an irrigation district has been known in California law since 1887, long before the passage of the Reclamation Act of 1902, and had been confirmed by California appellate court decisions a number of years before the Central Valley Project was initiated.

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 122

THE IVANHOE IRRIGATION DISTRICT,
Plaintiff,

vs.

ALL PARTIES AND PERSONS, etc.,
Defendants,

THE STATE OF CALIFORNIA,
Defendant and Appellant,

COURTNEY McCRACKEN,
Defendant and Appellee.

On Appeal from the Supreme Court of the State of California

Amicus Curiae Brief in Behalf of the American Farm Bureau Federation and California Farm Bureau Federation

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SUBJECT INDEX

Page

Amicus Curiae Brief

Brief Supporting the Judgment

Position of Amicus Curiae 1

Statement of the Case 2

The Judgments 4

Summary of Argument 4

I. The judgment appealed from rests on adequate non-federal grounds and the appeal does not present a substantial federal question 4

II. The judgment appealed from finds ample support in Federal law 4

III. A successful appeal in this case would permit the creation of a new and Federal system of water rights in the various Reclamation States 5

IV. The equities in the history of the Central Valley Project all support the judgment 5

Argument 6

I. The judgment appealed from rests on adequate non-federal grounds and the appeal does not present a substantial Federal question 6

The Bases of the Decision of the California Supreme Court 6

Argument on Absence of Substantial Federal Question 9

The Statement fails factually to Disclose Federal Jurisdiction 11

II. The judgment appealed from finds ample support in Federal law 16

Its Legislative Treatment 16

Pages

Reclamation Extension Act of 1914 (38 Stat. 686):
Section 1 21
Section 12 ..... 33, 36

Reclamation Project Act of 1939 (53 Stat. 1187):
Section 9(d) 2
Section 9(e) 2, 32

River and Harbor Act of 1937 (50 Stat. 844) 37

70 Stat. 484, Section 4 31

Wright Act (Calif. Statutes, 1887) Sections 11 and 13 34

Wright-Bridgford Act (Calif. Statutes, 1897), Sections 18 and 29 34

OTHER AUTHORITIES

26 Cal. Jur. 409 35

House Document No. 416, 84th Congress, 2nd Session 23

House Report No. 1468, 57th Congress, 1st Session 19, 20

Senate Document 113, 81st Congress, 1st Session 26

tional." One would have a right to expect some nearby specifications to support such a broad and unqualified assertion but the Statement contains none and diligent search of the decision has failed to reveal any language genuinely capable of such an interpretation. It is true that the California court discussed various federal statutes but such consideration was purely incidental to their relation to the contracting powers of the appellant Iyanhoe District under California law, and did not in any instance go so far as to even intimate unconstitutionality of any federal statute discussed.

After this delusive and unsupported assumption, the Statement then displays exceptional agility. It is not dismayed by the lack of a legal bridge between the California Court's decision and the federal questions it has fashioned. There being no legal bridge, the Statement proceeds to jump the gap right over to a postulation of a whole series of questions, every one undeniably federal in character but infected with the same basic delusion. These questions all presuppose that the California Court made some determination on matters referred to in them, when the Court at the most merely gave them passing mention. It did not have to decide any of the questions as postulated and carefully avoided even the appearance of doing so. As stated above, the California Court adhered strictly to the question before it which was whether the appellant Ivanhoe District could under California law assume the obligation in the contract with the United States offered for judicial consideration.

Then on page 18 of the Statement, a follow-up and equally erroneous allegation is made that the appeal in the instant case presents the Federal questions previously postulated in the apparent hope that repetition would supply a substance otherwise lacking.

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On Appeal from the Supreme Court of the State of California

Amicus Curiae Brief in Behalf of the American Farm Bureau Federation and California Farm Bureau Federation

Pursuant to the provisions of Rule 42 of this Court, consent of the parties having been obtained, this *amicus curiae* brief in behalf of the American Farm Bureau Federation and the California Farm Bureau Federation is offered for filing in the above-entitled matter. The interest of the parties named stems from the following facts:

At this same point, it is again erroneously assumed:

> "* * * where the federal questions were actually considered and decided by the highest court of the State, references to whether, how and when they were raised in the trial court are not necessary for the purpose of establishing the jurisdiction of the United States Supreme Court * * *"

Using this unfounded assumption as a starting point, the Statement continues its labor in an effort to give substance to the illusion that the California Court declared certain Federal statutes unconstitutional when all that court ever did was to find the provisions of the contract before it to be beyond the lawful powers with which the District had been endowed by California law. It would seem that in view of the California Court's explicitness in this respect, there would be little excuse for appellants to so mislead themselves.

As previously indicated on pages 8-9, *supra*, if Federal questions were raised in the trial court, the California Supreme Court brushed aside consideration of them as unnecessary to its decision.

On page 19 of the Statement, under "A", it is said:

> "The majority of the California Supreme Court concluded that the 160-acre water limitation provisions in all contracts are invalid. The provisions are required by the plain words of federal law * * * and are properly includible under state law * * *"

The implication is that the California Supreme Court unnecessarily went out of its way to interpret the Federal Omnibus Adjustment Act of 1926. This the Court did not do. It did say that *if* the language of the Omnibus Adjustment Act was to be interpreted as requiring the 160-acre limita-

1. The American Farm Bureau Federation is a nonprofit membership argicultural organization incorporated and existing under the laws of the State of Illinois and composed of affiliated organizations in the United States, and the Territory of Puerto Rico, having a total farmer membership of over 1,500,000.

2. The California Farm Bureau Federation is a nonprofit membership corporation organized and existing under the laws of the State of California and composed of over 60,000 farmers actively engaged in various agricultural pursuits within the State of California.

3. One of the primary purposes for which both of said organizations were established and are maintained by their respective memberships is the advancement of the economic interests of their members and all farmers generally in the States of the United States and Puerto Rico; this purpose also includes the objective of improvement of the conditions under which agricultural operations are conducted, including those which are carried on with the aid of irrigation.

4. The issues in the above-entitled matter include the integrity of the water laws of the separate individual 17 Western States and the basis on which farmers are to secure for the future the irrigation water necessary to their agricultural activities; specifically, one of the issues is whether irrigators under Federal Reclamation projects are to obtain irrigating water supplies on terms and conditions prescribed by their own experience or are to have those terms and conditions established by those much farther removed, physically as well as mentally, from actual operations. Furthermore, the effect and influence of the determination of this issue herein could quite conceivably

extend far beyond the area directly affected to irrigation practices throughout the United States. The parties hereto are solely concerned, and properly so, with a specific controversy as appears from their briefs. Since, for the reasons previously stated, the issues and their ramifications are much broader in scope and more far-reaching in their effects than those briefs would suggest, the American Farm Bureau Federation and the California Farm Bureau Federation without broadening the issues desire to present additional information and arguments.

5. By action of their respective memberships, both of said organizations are committed to policies embodying maximum local control in the control, appropriation, use and distribution of water used in irrigation, with the rights therein vested in the beneficial users thereof; that such policies have been found by said organizations through decades of practical experience to result in more harmonious administration in the control, appropriation and distribution of water for irrigation and in more efficiency and economy in the beneficial use thereof; that the basic issues in the above-entitled matter are whether for the future there shall be more or less of such local control and whether or not there shall be Federal as well as State systems competing in the control, appropriation, use and distribution of water for irrigation and the rights, if any vested therein.

6. Consents of counsel appear herein as an appendix.

For the foregoing reasons, the American Farm Bureau Federation and the California Farm Bureau, as representatives of agriculture and particularly of that segment

thereof dependent on irrigation, in the following brief present for the consideration of this Court certain aspects of the controversy related to the issues involved in the above-entitled matter. The brief, supporting the judgment of the Supreme Court of the State of California follows this Statement of interest.

Respectfully submitted,

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California Farm Bureau Federation

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COURTNEY McCRACKEN,
Defendant and Appellee.

On Appeal from the Supreme Court of the State of California

Brief in Behalf of the American Farm Bureau Federation and the California Farm Bureau Federation Supporting the Judgment

POSITION OF AMICUS CURIAE

The American Farm Bureau Federation and the California Farm Bureau Federation in this brief support the judgment of the Supreme Court of the State of California on the following grounds:

I. The judgment appealed from rests on adequate non-federal grounds and the appeal does not present a substantial federal question.

II. The judgment appealed from finds ample support in Federal law.

III. The contract proposed for validation is in effect an effort to initiate a new and Federal system for the control, appropriation, use and distribution of water for irrigation in the Western Reclamation States to compete with existing systems in the various states.

IV. The equities in the history of the Central Valley Project all support the judgment.

STATEMENT OF THE CASE

The facts here stated will for the most part only supplement those appearing elsewhere in the record and will be repetitious only to the extent necessary clearly to present the position and arguments of *amicus curiae*.

This case arose as an *in rem* proceeding authorized under the laws of the State of California to validate financial commitments assumed by irrigation districts created under California statutes. This validation was required of the Ivanhoe Irrigation District by Section 42 of the proposed contract (Exhibit A) which is the subject of this proceeding. The instant action was initiated in October of 1949 and judgment was entered on February 23, 1953. The purported contract in question is a combined affair wherein it is attempted to couple in a single agreement the obligation to repay the construction cost of a distribution system as required under Section 9(d) of the Reclamation Project Act of 1939 (53 Stat. 1187) with an obligation to take and pay for water from the Central Valley Project delivered to the distribution system purportedly under terms and conditions prescribed by Section 9(e) of the same statute.

The United States is obtaining the water supply for the Central Valley Project by appropriations in its own right under California law for the use and benefit of the Central Valley Project, by assignments of rights under applications made by the Director of Finance of the State of California for the use and benefit of the Central Valley Project and the landowners to be served from the Project, by acquisition of riparian, appropriative and prescriptive water rights in the San Joaquin River once held by Miller & Lux, Inc., and others, and finally, by assignment to it of appropriative rights held by the Madera Irrigation District. All of the water rights so acquired and now held are founded in the water laws of the State of California and were the voluntary acquisitions of the United States.

The contract in issue here would require the appellant Ivanhoe Irrigation District, to limit the deliveries of water to appellee McCracken to the entitlement of a tract of 160 acres designated by him, and leave him without any water service as to the remainder of his 309 acres, notwithstanding that under California Irrigation District law each of the 149 acres discriminated against had paid and for the future was obligated to pay equally with each favored acre its proportionate share of the total cost of the water rights, water supplies and other District services related to irrigation water distribution, including its proportionate share of all assessments levied to pay for the water from the Central Valley Project of which it would be deprived.

Appellee opposed validation of the contract between the United States and the Ivanhoe Irrigation District on various statatory and constitutional grounds and particularly on the ground that the acreage limitation provision in the contract—to 160 acres in his case—was not applicable and was invalid as to him and his property within the district as violative of his vested rights under the protective provisions of the California Constitution.

b. Reclamation officials cannot claim to have been taken by surprise but must be held to have had knowledge of the nature of a California irrigating water right when they entered upon the Project development in 1935.

c. The Central Valley Project was designed and is being operated to supply *supplemental* irrigation water to areas already under a high state of irrigated cultivation with a partial water supply and the acreage limitation is used to restrict the use of both supplies.

d. The water rights under California law voluntarily acquired by the United States for the benefit of the Central Valley Project in accordance with Reclamation law must be given their full value under State law.

ARGUMENT

I. The judgment appealed from rests on adequate non-federal grounds and the appeal does not present a substantial Federal question.

THE BASES OF THE DECISION OF THE CALIFORNIA SUPREME COURT.

The California Supreme Court left no doubt as to the bases of its decision. After extensive review of the factual situation, the Court set forth its conclusions as follows (App.* 63-4):

"In accordance with the foregoing it is concluded:

"(1) That the plaintiff is an irrigation district duly organized, existing and operating as such under the laws of this state.

"(2) That the title to the unappropriated domestic waters of the state is in the State of California in trust for the water users of the state as bene-

*App. refers to the appendix to Appellants' jurisdictional statement.

ficiaries and such waters are subject to appropriation under the laws of the state.

"(3) That the United States as assignee of appropriative rights, as original appropriator thereof, and in the acquisition of other rights for the same purpose stands in the same relation to such beneficial owners as does the state, namely, as trustee for such beneficial owners and is answerable for the faithful performance of that trust.

"(4) That in distributing the water contracted to be delivered to the District, the United States does so as a purveyor of water at a price for the benefit of the water users of the District.

"(5) That in so delivering the water to the District it is not competent for the United States or the District, either or both, to discriminate against the present or potential water users in the District on the basis of the amount of land owned by them, and that the 160-acre limitation contained in the original Reclamation Act is inapplicable to the subject matter of the contract and improperly contained therein.

"(6) That insofar as the contract provides for the construction of works for the storage and distribution of water to and by the District, the relationship of the parties is that of contractor and contractee. Upon the completion of the construction work the District is obligated under the law to pay for the same within 40 years in equal annual installments. Upon the completion of such payments the District is entitled to ownership of the works and property of the storage and distribution system free from any claims of the United States.

"(7) That insofar as the contract provides for furnishing water to the District at a price the

> United States in acting as a purveyor of domestic waters of the state to the District, under federal law, is bound to observe and comply with the laws of the state with reference to the rights which are vested in the water users being served or entitled to be served. In this respect neither the state nor any of its agencies may contract or otherwise provide that the distribution of water to those for whose benefit the right to the water was acquired may be arbitrarily discontinued.

"The judgment is affirmed."

A careful analysis of these conclusions and their supporting discussions demonstrates beyond the peradventure of a doubt that they rest solely upon the Constitution, statutes and decisional law of the State of California. The California Supreme Court adhered strictly to the question of the statutory and constitutional powers of the Ivanhoe Irrigation District under California law to contract with anybody, including the United States, to the extent attempted in the contract proposed for validation. The decision rather obviously did not concern itself with any powers, authorities or attributes of the United States; by its own terms it limited its determination to the question of the power of the appellant District under California law to contract away the vested rights of the appellee.

Just prior to setting forth the foregoing conclusions of law upon which it rested its decision, the California Supreme Court expressly discarded all other issues offered for its consideration in the following language (App. 62):

> "The trial court in its findings of fact and conclusions of law declared the contract to be invalid on numerous additional grounds not carried into the judgment. Conclusions that the contract is uncertain, lacks

mutuality, improperly prevents changes in the boundaries of the district, provides unreasonable security measures to the United States, and other conclusions not necessary to the judgment, are insufficiently supported when considered in connection with the views herein expressed as to the terms under which the parties may properly contract."

In other words, the Supreme Court explicitly limited the bases of its decision to the conclusions which it specifically set forth in its decision (App. 63-4) and, as has been commented on, explicitly excluded all other possible grounds for its decision (App. 62).

ARGUMENT ON ABSENCE OF SUBSTANTIAL FEDERAL QUESTION.

On the basis of the California Supreme Court's own conclusions of law, it is apparent that that court found it unnecessary to, and did not, go beyond California Constitutional statutory and decisional law to secure the bases necessary to the judgment it reached. It is true that the California Court discussed Federal law in some of its aspects but such discussions as were indulged in were obviously incidental in nature and served as no part of the basis for the Court's decision. Divested of incidentals, the decision of the California Court held that appellee McCracken was the possessor of certain vested rights under California law which appellant Ivanhoe Irrigation District, a creature of California law and possessed only of California endowed powers, proposed by its contract with the United States to violate; that the California Constitution prohibited such a violation. A more apparent exclusively State-supported result could hardly be conceived.

Under the circumstances, the following rule of *Herb v. Pitcairn*, 324 U.S. 117, 125-6 (1945), clearly applies:

> "This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds * * * The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our jurisdiction. Our only power over state judgments is to correct them to the extent that they inaccurately adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we correct its views of federal laws, our review could amount to nothing more than an advisory opinion."

So also the pronouncement of Mr. Chief Justice Stone in *Flournoy v. Wiener*, 321 U.S. 253, 262, to the effect:

> "* * * we have repeatedly held that where the judgment of a state court rests in part on a non-federal ground adequate to support it, this Court will not consider the correctness of the decision which the state court also made of a federal question otherwise reviewable here."

The foregoing decisions establish a rule which is not difficult of application in the absence of confusion, purposeful or otherwise.

With such limited consideration, this brief adopts the affirmative presentation of the appellees on the issue, and turns its attention to the search of the Jurisdictional Statement (hereinafter referred to as Statement) for some legitimate federal question.

THE STATEMENT FAILS FACTUALLY TO DISCLOSE FEDERAL JURISDICTION.

On the ground of relevance, attention is called to the formal and explicit statement of the California Supreme Court that the trial court "declared the contract to be invalid on numerous additional grounds not carried into the judgment which were insufficiently supported when considered in connection with the views expressed in its decision." This comment is relevant because appellants go behind this Court-established barrier in their search for jurisdiction. The very points which the California Court rejected as having no bearing on its decision are dragged back into use, to bolster assertions of the existence of Federal questions refuted by the record properly before this Court. Perhaps this explains why the trial court's memorandum opinion (which is not a part of the record) is included as an appendix to the Statement rather than findings of fact and conclusions of law on which the trial court based its judgment.

In an effort to piece together the jurisdictional base of a substantial federal question appellants wander far outside the limits set by the language of the California Supreme Court's decision. Notwithstanding that Court's repeated declarations that it was concerned only with the lawful powers under California laws of the appellant District to assume the obligations of the proposed contract which is the subject of this proceeding, appellants have consistently and continuously gone far afield in an effort to bring the California Court's decision within the realm of federal jurisdiction by consistently, continuously and erroneously treating the decision as based on federal law.

Illustrative of this effort is the bald averment in the Statement, page 6, that "the California Supreme Court has held * * * that certain federal statutes are unconstitu-

tion in the instant contract, the Omnibus Act ceased to be an "applicable" federal law by reason of objections resting in the Constitution and statutes of California (App. 50). So far as the provisions referred to as being "properly includible under state law" are concerned, the question is settled by the final judgment of California's highest court that they were not.

On page 21, the Statement includes an implication that the California Supreme Court used its own interpretations of the Omnibus Adjustment Act and Section 8 of the Reclamation Act of 1902 to reach certain of its conclusions. Reference to the language of the decision (App. 50-51), shows clearly that this is a misinterpretation of what the California Court actually said. That tribunal merely held that the theory of appellants would be sound only *if* the United States was "the owner absolute of the domestic waters of the state with the right to the use thereof freed from trust relationship on behalf of the real owners thereof, namely, the water users in the district." However, the Court held that, on the contrary, "the title to the water to be purveyed is not an unlimited title in the United States." This, of course, is a conclusion reached strictly on the basis of California water law and is not dependent in any way on the federal statutes appellants desperately seek to inject into the consideration.

On page 22 of the Statement appears:

> "The majority of the Court also held invalid *as a matter of federal law* the article found in each district's contract providing that title to all of the project works * * * " (Italics supplied.)

The only trouble with this allegation is that there is nothing in the decision either to support or even suggest it. It is to be noted that the Statement makes no attempt to

indicate the particular point in the decision where this finding is supposed to have occurred. The decision shows very clearly that Federal law had nothing to do with the actual holding of the Court; it was pure California law. The California Court merely held that if the appellant District was buying something, California law required that it obtain the article paid for.

On page 23 appears another very apparent misconstruction of the Court's decision. It is said:

> "Finally, the majority concluded that the provisions of the contracts with the United States relating to delivery and payment for water supply are illegal * * * "

The Court held that the provisions referred to were beyond the power of the District to accept, which obviously is vastly different from the construction used in the Statement. Here again, appellants argue the objectionable provisions are authorized by California law after the California Supreme Court had already ruled they were not.

It is submitted that the Statement after diligent search fails completely to fashion any substantial Federal ground for the jurisdiction of this Court but on the contrary the very specifications in the Statement, when appraised factually, demonstrate the fidelity with which the California Supreme Court kept constantly before it the only question for its decision and that was, had the Iyanhoe Irrigation District, an agency of the State of California, been endowed by the statutes and the constitution of California with the powers necessary to permit it to enter into the contract before the California Supreme Court for consideration. That question having been decided adversely to the appellant District on a basis of strictly California law, the appeal is wholly devoid of Federal issues and without merit.

II. The judgment appealed from finds ample support in Federal law.

It is submitted that even if the instant appeal is regarded as having some Federal undertones, Federal law itself upholds the judgment. While the result reached by the California Supreme Court is based on adequate State grounds, the same result would follow as well from the proper interpretation of relevant Federal Statutes.

This conclusion flows from the fact that nothing has occurred in Reclamation history to weaken the force and efficacy of Section 8 of the Reclamation Act which has been a cornerstone of Reclamation policy since its inception.

The ensuing discussion of its legislative, administrative and judicial treatment, in that order, will show that Section 8 still retains all of its original poteney and efficacy and that its coverage has not been lessened.

ITS LEGISLATIVE TREATMENT

Appellee's water right, even though of an inchoate nature is a vested right under California law. This is the holding of *Inyo Consolidated Water Co. v. Jess*, 161 Cal. 516, 520, 119 P. 534, which is a leading California case on the point. This rule is referred to in the judgment appealed from. It will be noted from the *Jess* case, that the incipient right, obtained by filing a notice of appropriation is an interest in realty which becomes vested in the appropriator, is transferable, and would support an action in quiet title. As such a vested right, it is entitled to the full protection of the provisions of Section 8 of the original Reclamation Act.

Appellants claim that Section 8 has in effect been repealed *pro tanto* by provisions to be found in Section 46 of the Omnibus Adjustment Act of 1926 (44 Stat. 649, 43 U.S. D.A. 423e). They do not argue the point. They just assume the fact from a superficial consideration of the two pro-

visions. They do not say how much of Section 8 is left or how much of a vested right remains in a beneficial water user after giving effect to their proposed pruning.

To facilitate the subsequent consideration Section 8 of the original Reclamation Act is set forth at this point:

> "That nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: *Provided*, That the right to the use of water acquired under the provisions of this act shall be appurtenant to the land irrigated and beneficial use shall be the basis, the measure, and the limit of the right."

Ever since the beginning of Reclamation, Section 8 has been pointed to with pride by legislators and administrators as according to local law of water rights the respect to which local experience, ideas and ingenuity were entitled. In effect, Section 8 recognized that the beneficial users of irrigating water could more easily and readily develop rules and regulations governing the control, appropriation, use and distribution of irrigating water most adaptable to their needs and conditions. In fact, as will be seen, in 1902 in passing the Reclamation Act, Congress knew that some of the rules and regulations already adopted "were well nigh perfect" in their conception and operation. Congressional intent was then to take advantage of these local developments and to

save the Government from the trouble, responsibility and expense of providing a substitute for the local control which Congress then found so satisfactory. This policy has been adhered to throughout Reclamation history and this Court has consistently called attention to the statutory requirement that the administrative ageney abide by the Congressional direction found in Section 8.

Of course, if Section 8 of the original Reclamation Act is held to have been modified by Section 46 of the Omnibus Adjustment Act, it is modified as to all of the rest of the Reclamation States in the West. The proposed application of the acreage limitation provision of the *Omnibus Act* to the appellant District unquestionably would constitute a substantial interference with the laws of California "in the control, appropriation, use and distribution of water used in irrigation," and would unquestionably affect and actually extinguish vested water rights of the appellee acquired under California's Constitutional, statutory and decisional law. Not only this, but under the interpretation of the Bureau of Reclamation as evidenced by the contract, despite the Congressional directive, "the right to the use of water acquired" under the Act would *not* be appurtenant to the land irrigated and beneficial use would *not* alone be the basis, the measure, and the limit of the right."

Nullification of this very core of Section 8 in California would open the way for similar denials of water users' irrigation water rights in other states and the respect for state water rights, long the proud claim of the Bureau of Reclamation, would fade into oblivion.

Appellants claim that the present proposed application of the *Omnibus Adjustment Act's* acreage limitation is merely a continuation of the policy of the original Reclamation Act expressed in Section 5 of that statute. They wholly

fail to recognize the vast difference between a restriction voluntarily accepted under that Section 5 and one imposed by force of law on a protesting victim.

It is submitted that there is absolutely nothing in the history or background of Reclamation law which supports the contention that Congress ever intended anything of the kind. In fact, all of the indicia of legislative intent commonly used to ascertain what Congress proposed to accomplish points decidedly in exactly the opposite direction.

Congress had some very definite ideas as to what it wanted to accomplish in enacting Section 8 of the original Reclamation Act. In House Report No. 1468, 57th Congress, 1st Session, which Representative Mondell submitted with the bill, it was said:

On page 6:

> "Section 8 recognizes state control over waters of non-navigable streams such as are used in irrigation, and instructs the Secretary of the Interior in carrying out the provisions of the act to conform to such laws. It also provides that nothing in the act shall be held as changing the rule of priorities on interstate streams. In order that the water rights acquired under the provisions of the act shall be of the character most approved by centuries of irrigation practice, and such as will absolutely insure the user in his right and prevent the possibility of speculative use of water rights, the character of the right which is contemplated under the act is clearly defined to be that of appurtenance or inseparability from the lands irrigated and founded on and limited by beneficial use. Under this section uniformity of record of the rights is secured and the rules of priorities of rights are not disturbed, while the cost of maintaining the administrative machinery of water distribution is placed on users and the states; the Government is free from all expense or responsibility when the projects are completed and paid for. The character

of the water rights contemplated being clearly defined, the Secretary of the Interior would not be authorized to begin construction of works for the irrigation of lands in any State or Territory until satisfied that the laws of said State or Territory fully recognized and protected water rights of the character contemplated. This feature of the bill will undoubtedly tend to uniformity and perfection of water laws throughout the region affected."

On page 8:

"The American irrigator, beginning with the handicap of a woeful lack of knowledge of the subject and an inherited common-law rule fatal to its solution, has acquired a vast fund of theoretic knowledge and practical experience. He has been instrumental in the adoption of State constitutional provisions, the enactment of laws, the adoption of rules and regulations, and the establishment of customs relative to the use of water in irrigation and in the arid region which, in some states, are well-nigh perfect, and in all are a distinct advance over former conditions. The bill recognizes the control of these local laws in matters of recording appropriations of water and in establishing and maintaining the rights of users, but as the laws of some of the States and Territories involved recognize water rights varying considerably in character, and it was thought best that the water rights provided under Government works should be of the most ideal character, recognizing clearly the principle of public control over waters used in irrigation, the rights are made appurtenant to the land irrigated on the basis of beneficial use as the best expression of this principle and as an effectual bar to speculative ownership or control of water."

These excerpts clearly demonstrate how important the principles of Section 8 were regarded by Congress and how basic they were to the whole Reclamation structure as con-

ceived by Congress. No change in this Section has ever been made by Congress. The idea of repeal of any part of it by implication, and indirect at that, is quite fantastic.

As might be expected with legislation of this character, it was no more on the books than patching was commenced. Virtually every session of Congress thereafter saw something added to the original act. Congress must have had a premonition of this as in 1914, in Section 1 of the Reclamation Extension Act (38 Stat. 686) it decreed that the original Act together with all amendments and supplements was to be known as the Reclamation law. This particular supplement extended the construction cost repayment period from 10 years to 20.

By 1926, the financial condition of a substantial number of projects had become so difficult that wholesale adjustments had to be made. Hence, the Omnibus Adjustment Act (44 Stat. 646) in Section 48 of which Congress provided:

> "The purpose of this act is the rehabilitation of the several reclamation projects and the insuring of their future success by placing them upon a sound operative and business basis, and the Secretary of the Interior is directed to administer this act to those ends."

Into this act crept Section 46 which increased the reliance of the administration of the law on irrigation districts, extended the construction cost repayment period to 40 years and required a recordable sales contract on acreages in excess of 160 acres.

It should be noted that in this same Adjustment Act, Section 47, Congress repealed several previously enacted sections of the Reclamation law but did not touch Section 8. It would appear that this is a case where the rule established in *Guessefeldt v. McGrath*, 342 U.S. 308, 319, 72 S. Ct. 338, 91 L. Ed. 342, 350, would apply. There is undoubtedly

at stake constitutional rights of substantial value and the statute involved can fairly be said to be a patchwork of 24 years standing when the section in question was passed. In the case cited this Court said:

> "Certainly, the constitutional problem is not imaginary, and the claim not frivolous which would have to be rejected to decide in the Government's favor. Considering that confiscation is not easily to be assumed, a construction that avoids it and is not barred by a fair reading of the legislation is invited.
>
> "The concern of the Trading with the Enemy Act is with problems at once complicated and far-reaching in their repercussions. Instead of a carefully matured document, the legislation was a makeshift patchwork. Such legislation strongly counsels against literalness of application. It favors a wise latitude of construction in enforcing its purposes."

With this background, appellants claim that Congress intended by this Section to emasculate Section 8 together with its specific and very definite purposes. As will be seen, the Bureau of Reclamation itself never recognized or asserted any such an effect until the present juncture.

The original Reclamation Act was passed for the purpose of disposing of public lands. This served as a constitutional purpose, so long as there were public lands involved but the Central Valley Project having no public lands had to look elsewhere for constitutional authority for its activation. At the time of its initiation, navigation and flood control served this purpose until the "General Welfare" clause came to the rescue.

This sequence of purposes illustrates the fact that at its birth the Central Valley Project was completely *sui generis*. In many of its aspects it still is. In 1935, the great interior Valley of California drained by the Sacramento and San

Joaquin Rivers was in private ownership. The land was and is farmed to many crops in holdings of varying size. In its characteristics, it differs from all previous reclamation projects in that the land is settled throughout in farms, villages and small towns. The Central Valley has a pattern of economics and of farming which has resulted from generations of trial and error. The pattern changes somewhat from time to time as prices of farm products fluctuate. It also changes as the pressure for land increases. However, the general character of the farming industries and of the rural communities has been established for many years.

This summarization is borne out by two excerpts from the original and only feasibility report ever submitted on the Project. This original report of feasibility, dated November 26, 1935, and approved by President Roosevelt on December 2, 1935 (House Document No. 416, 84th Congress, 2d Session, pp. 562-7) merely stated that the Project embodied:

> "* * * a plan for the conservation, regulation, distribution and utilization of the water resources of the Sacramento and San Joaquin Rivers to provide urgently needed water supplies for existing agricultural, industrial and municipal developments in the Sacramento and San Joaquin Valleys and upper San Francisco Bay Region, which contain 3,000,000 acres of settled irrigated and productive land, and a population of 900,000 persons. In addition to providing new water supplies to meet serious problems of water shortage, the Project contemplates the restoration of commercial navigation on the upper Sacramento River, increased flood protection of the Valley lands, and incidentally the generation of about a billion and a half kilowatt hours annually of hydroelectric energy."

Later on:

> "The economic values of the Project are of great magnitude. The Project will not bring into production new

agricultural areas but will maintain present values and civilization. Of the 3,000,000 acres now irrigated, 1,000,000 face acute water shortage, and abandonment is proceeding rapidly."

Thus, it is seen that all of the lands in the Project were already developed to a high state of production and the economic pattern under the American principles of free enterprise had been well established. No new lands were to be irrigated and the water supplied was to be for supplemental purposes. The Project was merely to rescue areas already fully developed and under a high degree of cultivation.

Apparently the economic pattern resulting from the free play of American enterprise is to be destroyed along with a fundamental principle of Reclamation development. The result would be to impose upon a fully developed and exclusively private economy an artificial and inflexible restriction on private ownership of rights in land and water which cannot avoid outright confiscation of property values. Furthermore, the irrigation water furnished by the Project is supplemental in character and this artificial and inflexible restriction, which it is said must accompany the supplemental supply, as a matter of practical water distribution, casts its pall over the entire commingled supply.

ITS ADMINISTRATIVE TREATMENT.

Section 8 of the original Reclamation Act has continued to be recognized as having its full original status under administrative practice and interpretation.

Section 46 of the Omnibus Adjustment Act has never appeared to affect the efficacy and potency of Section 8 under administrative practice and interpretation. Respect

for state water laws has always been the proud claim of the Bureau of Reclamation. Without prolonging the argument on the point, attention is called to an excerpt from a reply to an inquiry by the Regional Director of the Central Valley Project. It is Note 15 appearing in *United States v. Gerlach Livestock Co.*, 339 U.S. 725 at 740:

> "After consultation with the Commissioner of Reclamation and the Secretary of the Interior, the Regional Director, Region II, Bureau of Reclamation, replied to questions concerning the Central Valley Project by the Irrigation Districts Association of California:
>
> "The Bureau of Reclamation does recognize and respect existing water rights which have been initiated and perfected or which are in the state of being perfected under state laws. The Bureau of Reclamation has been required by Section 8 of the Reclamation Act of 1902 ever since the inception of the reclamation program administered by the Bureau of Reclamation. The Bureau of Reclamation has never proposed modification of that requirement of Federal law and, on the contrary, the Bureau of Reclamation and the Secretary of the Interior have consistently through the 42 years since the 1902 Act, been zealous in maintaining compliance with Section 8 of the 1902 Act. They are proud of the historic fact that the reclamation program includes as one of its basic tenets that the irrigation development in the West by the Federal Government under the Federal Reclamation Laws is carried forward in conformity with State water laws. Ample demonstration of the effect of this law and policy of administration, in act, has been given in connection with the Central Valley Project. Water filings made by the State have been obtained by the Bureau of Reclamation by assignment, and vested rights have been acquired by the United States by purchase, the considerations amounting to millions of dollars and being

agreeable to the vendors—all in conformity with State laws. Further, other water rights of landowners which will or may be affected by the operations of the project are being analyzed and appropriate adjustments, giving full recognition of the rights of the landowners, are in the process of being worked out."

Again, we have an excerpt from a Report of the Regional Director, Region II, Bureau of Reclamation, on the Central Valley Project, dated December 1, 1947, approved by the Secretary of the Interior, July 29, 1948, and published as Senate Document 113, 81st Congress, 1st Session at p. 39:

"In conducting irrigation investigations and constructing and operating projects throughout the West, the Bureau of Reclamation fully recognizes and respects water rights established under State law. Not only is this a specific requirement of the Reclamation Act under which the Bureau operates, *but such a course is the only fair and just method of procedure.* This basin report on the Central Valley is predicated on such a policy." (Italics supplied.)

There is no ambiguity in this statement that State water rights would be given their full entitlement. Thus the policy of the Bureau was not modified by the purported requirements of the Omnibus Adjustment Act.

Thus, it will be seen by administrative practice and interpretation, Section 8 of the original Reclamation Act was carried by the Bureau of Reclamation at least to July 29, 1948, at full strength and efficacy. It did not recognize any encroachment by the Omnibus Adjustment Act.

ITS JUDICIAL TREATMENT.

Since the passage of the *Omnibus Adjustment Act,* this Court has had at least three occasions to consider the status and efficacy of Section 8 of the original Reclamation Act

and on each of these occasions has made leading decisions rejecting encroachments upon its full efficacy.

The first of these cases was *Ickes v. Fox*, 300 U.S. 82, 93, 94; 57 S. Ct. 412 (1937). In that case, the Secretary of Interior sought to reduce the water allotment per acre in the Sunnyside Division of the Yakima Reclamation Project from 4.84 acre feet to 3 acre feet, desiring to use the 1.84 acre feet elsewhere. The attempted whittling process was disapproved by this Court in the following language which clearly outlines the issue:

On page 93:

> "Succinctly stated, the case comes to this: The United States, under the Reclamation Act, constructed an irrigation system for the purpose of storing and distributing water for irrigation of arid lands. Respondents own water rights under the system for lands of that kind, and these lands require artificial irrigation to render them productive. So far as these respondents are concerned, the Government did not become the owner of the water rights, because those rights by Act of Congress were made 'appurtenant to the land irrigated'; and by a Washington statute, in force at least since 1917, 'were to be and remain appurtenant to the land'."

On page 94, this Court went on:

> "Although the Government diverted, stored and distributed the water, the contention of petitioner that thereby ownership of the water or water rights became vested in the United States is not well founded. Appropriation was made not for the use of the Government, but under the Reclamation Act for the use of the landowners; and by the terms of the law and of the contract already referred to, the water rights became the property of the landowners, wholly distinct from the property right of the Government in the irrigation works.

Compare *Murphy v. Kerr*, 296 F. 536. The Government was and remained simply a carrier and distributor of the water, with the right to receive the sums stipulated in the contracts as reimbursement for the cost of construction and annual charges for operation and maintenance of the works.

"And in those States, generally, including the State of Washington, it long has been established law that the right to the use of water can be acquired only by prior appropriation for a beneficial use; and that such right when obtained is a property right, which when acquired for irrigation, becomes by State law and here by express provision of the Reclamation law as well, part and parcel of the land upon which it is applied."

This case was followed by *Nebraska v. Wyoming*, 325 U.S. 589, 614, 65 S. Ct. 1332 (1945) which resulted from a controversy over the waters of the North Platte River flowing through Colorado, Wyoming and Nebraska. In this case, Nebraska complained of the amount of water diverted upstream from its users by Wyoming. The United States intervened to claim all of the unappropriated water in the stream and it was in connection with that claim that this Court considered the role of Section 8 of the original act. On page 614, this Court said:

"We have then a direction by Congress to the Secretary of the Interior to proceed in conformity with State laws in appropriating water for irrigation purposes. We have a compliance with that direction. Pursuant to that procedure, individual landowners have become the appropriators of the water rights, the United States being the storer and the carrier * * * Though we assume *arguendo* that the United States did own all of the unappropriated water, the appropriations under State law were made to the individual landowners pursuant to the procedure which Congress pro-

vided in the Reclamation Act. The rights so acquired are as definite and complete as if they were obtained by direct cession from the United States."

Thus, this Court told the Bureau of Reclamation that regardless of ideas it might have on the subject, Congress had directed it to proceed under the laws of Wyoming in obtaining Project water supplies and that it should do so.

The last case is the comparatively recent one of *United States v. Gerlach Livestock Co.*, 339 U.S. 725, 70 S. St. 955 (1950) in which the issue was the right of certain riparian landowners along the San Joaquin River to compensation for loss of water rights resulting from the construction of Friant Dam as a part of the Central Valley Project.

This Court there said in giving full recognition to the Congressional direction found in Section 8:

> "The laws of the State * * * determine the rights and liabilities of landowners and appropriator * * *
>
> "Congress proceeded on the basis of full recognition of water rights having valid existence under state law. By its command that the provisions of the Reclamation law should govern the construction, operation and maintenance of the several construction projects, Congress directed the Secretary of the Interior to proceed in conformity with state laws, giving full recognition to every right vested under these laws. Cf. *Nebraska v. Wyoming*, 295 U.S. 40, 43, 79 L. Ed. 1289, 1291, 55 S. Ct. 568; *California-Oregon Power Co. v. Beaver Portland Cement Co.*, 295 U.S. 142, 169, 70 L. Ed. 1356, 1364, 55 S. Ct. 725; *Nebraska v. Wyoming*, 325 U.S. 589, 614, 89 L. Ed. 1815, 1829, 1830, 65 S. Ct. 1332; *Silas Mason Co. v. Tax Com.*, 302 U.S. 186, 82 L. Ed. 187, 58 S. Ct. 233 * * * We think it clear that throughout the conception, enactment and subsequent administration of the plan *Congress has recognized the property status of water rights vested under California law.*" (Emphasis supplied.)

This Court also held in that decision at p. 751:

> "The Amendment (1928) was submitted to and adopted by the electors in November, 1928, and now constitutes California's basic water law to which the Federal Reclamation Act defers."

Mr. Justice Douglas had some additional comments in his concurring opinion as follows (p. 759):

> "This Court has recognized, however, that administration of the Act is to be in conformity to State laws. See *Power Co. v. Cement Co.*, 295 U.S. 142, 164. *Nebraska v. Wyoming*, 325 U.S. 589, 614. That was the assumption in *Mason Co. v. Tax Commission*, 302 U.S. 186, a case involving the navigable waters of the Columbia River.
>
> "Whatever doubts there may be are for me dispelled by the administrative practice under the Act, summarized by the Commissioner of Reclamation in a memorandum dated April 19, 1950."

And on p. 761:

> "This Court has often emphasized that weight is to be given to the interpretation of a statute made by an administrative agency. See *United States v. American Trucking Assns.*, 310 U.S. 534, 549; *Labor Board v. Hearst Publications*, 322 U.S. 111, 130. This long course of practice by the Bureau of Reclamation resolves any doubts and ambiguities that arise from the history and wording of the statute."

Thus, it is seen that, whether considered from the standpoint of any branch of Government—legislative, executive or judicial—Section 8 of the original Reclamation Act has not lost any of its potency or efficacy nor has the field it covers been curtailed in any way.

It should be pointed out that in no place has any question been raised as to the extent of the vested right entitled to

respect. Neither in the Congressional discussions nor in the subsequent history of the statute has there ever been the slightest intimation that any part of a vested water right, if such there can be, might be denied the protection intended by Section 8.

FURTHER CONGRESSIONAL ACTION.

After the decision of this Court in *United States v. Gerlach Livestock Co., supra,* and after the Secretary of the Interior had, on July 29, 1948, advised Congress of the consistent policy of the Department of the Interior to respect water rights vested under State laws, Congress on July 2, 1956 passed a supplement to the Reclamation laws (70 Stat. 484) Section 4 of which re-enacted verbatim Section 8 of the original Reclamation Act.

It should be noted that this action by Congress took place on July 2, 1956, more than three years AFTER the trial court had on February 27, 1953, ruled that vested rights under California water laws were beyond the reach of the acreage limitations provided in the Omnibus Adjustment Act. This legislation preceded the decision herein by the California Supreme Court on January 24, 1957.

Furthermore, in presenting this legislation to the Irrigation Subcommittee of the Interior Committee of the House of Representatives, Congressman Clair Engle, the author, had this to say at a hearing on January 24, 1956:

> "The Federal Government cannot give a water right because the Federal Government does not own any water. The water which it takes from the State of California it holds in trust for the purpose of implementing the Central Valley Project. Therefore, water rights accrue under State law."

This is essentially the holding of the trial court in the instant case as well as that of the judgment appealed from.

III. This appeal actually seeks to create in the field of control, appropriation, use and distribution of water used in irrigation throughout the Reclamation States a new and Federal system of water rights to compete with the various existing State systems.

One has only to visualize the situation which a successful appeal herein would create in the water right field in the appellant district and correspondingly in other areas of the West. Under California law a water user has rights which can be asserted and protected in the California courts; they are statutory rights given him by law and to protect them, he need go only to his county seat. Under the proposed contract, which concededly vests no water rights in the users, all that such water user would have would be a contractual right against the Government enforceable probably only in Washington, D. C. The proposed system, if the present appeal is successful, obviously would be devoid of any control by the State of California and the contract with the United States would be the sole and only basis for the distribution of irrigation water in the Central Valley Project and elsewhere where the contract was used. Under statutory law, the user would know at all times where he stood and if changes were proposed, he would have a chance to protest. Under the contract, he would have no such right to be heard.

That this is exactly what appellants have in mind is clearly indicated by the comments in their brief on pages 60 to 80 to the language of this Court in *Nebraska v. Wyoming, supra,* quoting:

> "We do not suggest that where Congress has provided a system of regulation for Federal projects it must give way before an inconsistent state system."

In other words, it is the contention of the appellants that the interpretation of Section 9(e) of the Reclamation Proj-

ect Act which produced the contract under consideration repealed Section 8 virtually while the Secretary of the Interior was assuring Congress of continuing conformity with it.

It may be noted that appellants have not indicated how they will overcome the constitutional hurdle occasioned by their invasion of the reserved jurisdiction of the State.

IV. The equities in the history of the Central Valley Project all support the judgment.

These equities in the order in which they will be discussed are:

a. The vesting of beneficial rights to the use of water under California law in the actual users was the rule long before the original Reclamation Act was passed.

b. Reclamation officials were not taken by surprise but must be held to have had knowledge of this nature of a California water right when they entered upon the Project Development in 1935.

c. The lack of action by the Secretary of the Interior under Section 12 of the Reclamation Extension Act of 1914 to exclude all non-consenting excess landowners from the proposed Central Valley development justifies the conclusion that the development was not regarded as a Reclamation project at its initiation but was converted into one later in life.

d. The Central Valley Project was designed and is being operated to supply *supplemental* irrigation water to areas already under a high state of irrigated cultivation with a partial water supply and the acreage limitation is used to restrict the use of both supplies.

e. Water rights acquired under State law in accordance with Reclamation law and by voluntary act of the United States must be given their full value of State law.

a.

The vesting of water rights under California law in the actual beneficial users was the rule long before the original Reclamation Act was passed.

This discussion will be limited to that phase dealing with irrigation districts as more relevant to the present issue.

The State of California passed its first irrigation district act in 1887 (California Statutes, 1887 p. 29). In that Act, Sections 11 and 13 read in part as follows:

> "Sec. 11. It is hereby expressly provided that all waters distributed for irrigation purposes shall be apportioned ratably to each landowner upon the basis of the ratio which the last assessment of such owner for district purposes within said district bears to the whole sum assessed upon the district; provided that any land owner may assign the right to the whole or any portion of the water apportioned to him."
>
> "Sec. 13. The legal title to all property acquired under the provisions of this Act shall immediately and by operation of law vest in such irrigation district and shall be held by such district in trust for and is hereby dedicated and set apart to the uses and purposes set forth in this act." (last sentence omitted.)

In 1897, this Wright Act was superseded by the Wright-Bridgford Act (California Statutes, 1897, p. 254). In that Act, Sections 18 and 29 include the identical language quoted above.

A long line of cases in the California courts have left no doubt that it is "established law of the State that an irrigation district is trustee for the landowners within the district

and limited in its trust to receive and distribute water to them."

Merchants National Bank v. Escondido Irr. Dist., 144 Cal. 329 (1904);

Tulare Irr. Dist. v. Collins, 154 Cal. 440, 97 P. 1124 (1908);

Hall v. Superior Court, 198 Cal. 373, 245 P. 813 (1925);

Lindsay-Strathmore Irr. Dist. v. Wutchumna Water Co., 111 CA 688, 296 P 933 (1931);

Allen v. Hussey, 101 C.A. 2d 457, 225 P. 2d 674 (1951).

In 26 Cal. Jur. 409, which bears a copyright date of 1926 and is an authoritative source of California law, the following appears:

> "The property and water rights of an irrigation district are held by it in trust for the purposes for which it was created, namely, the irrigation of lands within the district, the legal title being in the district, and the beneficial title being in the owners of land within its boundaries."

Thus, this rule was in existence in California when the Reclamation Act was passed and has never been changed.

b.

The long-standing rule discussed in the previous subsection was available to the legal profession throughout the years since irrigation on a cooperative scale commenced in California; it is incredible that the numerous counsel of the Bureau of Reclamation were unaware of its existence. The most casual study of California irrigation district law brings it to light. Certainly the administrative agency was not taken by surprise and under the circumstances did not

take the steps prescribed by Congress in Section 12 of the Reclamation Extension Act to avoid controversies such as the present.

c.

The Reclamation Extension Act of August 13, 1914 (38 Stat. 686) in its Section 12, directs the Secretary of the Interior as follows:

> "That before any contract is let or work begun for the construction of any reclamation project hereafter adopted, the Secretary of the Interior shall require the owners of private lands thereunder to agree to dispose of all lands in excess of the area which he shall deem sufficient for the support of a family upon the land in question upon such terms and at not to exceed such price as the Secretary of the Interior may designate; and if any landowner shall refuse to agree to the requirements fixed by the Secretary of the Interior, his land shall not be included within the project if adopted for construction."

This particular provision is still law and is carried by the Bureau of Reclamation in its volume entitled "Federal Reclamation Laws, Annotated." It has never been repealed and mere failure of the executive branch to enforce it does not result in its modification or repeal. See *District of Columbia v. John R. Thompson Co.*, 346 U.S. 100, 73 S. Ct. 1007. The fair conclusion from this lack of action under this specific direction from Congress is that the Central Valley development was not regarded at the time of its initiation as a true Reclamation Project.

This fact points up again the completely *sui generis* nature of the Central Valley Project. It has no boundaries and it is doubtful if any definite criteria exist for their determination. While this Court realistically recognized the realistic approach of Congress to the improvement, the

private citizens affected were left completely at sea as to their rights and expectations. Born an NRA project, it was baptized as a navigational and flood control development and converted to a reclamation project in later life. It spent a few years as an operation of the Water Project Authority for which the Bureau of Reclamation was to build the project. At no time did anyone really know where they stood nor which way to turn to protect their rights.

It may be pointed out in this connection that the only Congressional affirmative authorization the Central Valley Project ever had was that given in 1937 in the River and Harbor Act of that year (50 Stat. 844, 850), wherein it:

> "Provided further, that the entire Central Valley Project, California, heretofore authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115) and the first Deficiency Appropriation Act, Fiscal Year 1936 (49 Stat. 1622), is hereby reauthorized and declared to be for the purpose of improving navigation, regulating the flow of the San Joaquin River and the Sacramento River, controlling floods, providing for storage and for the delivery of the stored waters thereof, for the reclamation of arid and semi-arid lands and lands of Indian Reservations and other beneficial uses, and for the generation and sale of electric energy as a means of financially aiding and assisting such undertakings and in order to permit the full utilization of the works constructed to accomplish the aforesaid purposes; provided, the provisions of the Reclamation law, as amended, shall govern the repayment of the expenditures and the construction, operation, and maintenance of the dams, canals, power plants, pumping plants, transmission lines, and incidental works deemed necessary to said entire project, and the Secretary of the Interior may enter into repayment contracts, and other necessary contracts with State agencies, authorities,

associations, persons, and corporations, either public or private, including all agencies with which contracts are authorized under Reclamation law * * *; and, provided further, That the said dam and resevoirs shall be used, first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses; and third, for power * * * "

It may be noted that, until the final conversion of the improvement into an orthodox Reclamation Project about 1944, the question of the application of acreage limitation was still undecided. During the late '30s, the Project was being built for California's Water Project Authority. The proposition of changing the character of a Project after it is well started and injecting acreage limitation and other objectionable features into its operation lacks equity.

d.

The Central Valley Project, as shown by all the reports and evidence of record, was designed and has been constructed to provide a supplemental supply of irrigation water to areas of need. All of these areas already had some irrigation water but not to meet their requirements. The supplemental supply was intended to fill out their shortages and save the agricultural developments on some 1,000,000 acres approaching abandonment. This is shown in the Feasibility Report referred to on page 23.

As a matter of practical operation, the original and supplemental water supplies must be mingled for efficient distribution and the acreage limitation is applied to both supplies.

e.

All of the water rights now held by the Bureau of Reclamation in the Central Valley Project were voluntarily

acquired by the Bureau under the water laws of the State of California and all were acquired "for the use and benefit of the Central Valley Project." In other words, the water rights acquired are under California law subject to a trust which as a matter of law, the Bureau also accepted.

What appellants are here seeking is to have this Court relieve the Bureau of Reclamation of this voluntarily accepted trust.

CONCLUSION

For the reasons shown:

a. The Judgment appealed from rests on adequate non-federal grounds and the appeal does not present a substantial Federal question, and

b. Federal law and equitable considerations provide ample support for the judgment.

c. It follows that the judgment appealed from should be affirmed.

Respectfully submitted,

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(Appendix Follows)

Appendix

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 122

THE IVANHOE IRRIGATION DISTRICT,
Plaintiff and Appellant,

vs.

ALL PARTIES AND PERSONS, etc.,
Defendants,

THE STATE OF CALIFORNIA,
Defendant and Appellant,

COURTNEY McCRACKEN,
Defendant and Appellee.

Consent to Filing of an Amicus Curiae Brief in Opposition to the Merits on Appeal

The State of California and the Ivanhoe Irrigation District, the appellants herein, hereby consent to the filing of an amicus curiae brief by Edson Abel, Esq. Such brief is to be filed in opposition to appellants' brief on the merits on appeal, and is to be served on appellants not later than the date the appellees' briefs on the merits are due for filing and service. Such brief is to be filed on behalf of the Cali-

fornia Farm Bureau Federation and the American Farm Bureau Federation.

Dated: San Francisco, California,
March 10, 1958.

EDMUND G. BROWN,
Attorney General of the
State of California

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Attorney for Appellees

In the Supreme Court of the United States

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Defendants,

THE STATE OF CALIFORNIA,
Defendant and Appellant,

COURTNEY McCRACKEN,
Defendant and Appellee.

Consent to Filing of an Amicus Curiae Brief in Support of Appellee on the Merits on Appeal

Appellees hereby consent to the filing of an amicus curiae brief by Edson Abel, Esq. Such brief is to be filed in support of appellees' brief on the merits on appeal, and is to be served on the parties not later than the date the appellees' briefs on the merits are due for filing and service. Such brief is to be filed on behalf of the California Farm Bureau Federation and the American Farm Bureau Federation.

Dated: San Francisco, California
March 14, 1958

HARRY W. HORTON

/s/ HARRY W. HORTON
Attorney for Appellees